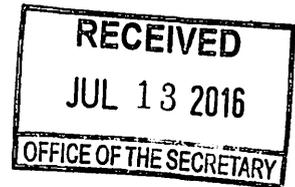


UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION



In the Matter of

**BIOELECTRONICS CORPORATION,  
IBEX, LLC,  
ST. JOHN'S, LLC,  
ANDREW J. WHELAN,  
KELLY A. WHELAN, AND  
ROBERT P. BEDWELL,**

Respondents.

File No. 3-17104

**SECOND SUPPLEMENTAL DECLARATION OF ANDREW WHELAN IN SUPPORT  
OF RESPONDENTS' MOTION FOR SUMMARY DISPOSITION**

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Counsel for Respondents,  
Bioelectronics Corporation; IBEX, LLC; St.  
John's, LLC; Andrew J. Whelan; and Kelly A.  
Whelan

I, Andrew Whelan, declare as follows:

1. I have personal knowledge of the facts stated herein and if called on would and could testify competently thereto.

2. This declaration supports the motion of BioElectronics Corporation (“BIEL”), IBEX, LLC (“IBEX”), St. John’s, LLC (“St. John’s”), Andrew J. Whelan and Kelly A. Whelan (collectively, “Respondents”) for summary disposition on the Division’s claims against Respondents.

3. BIEL hired Drew Walker based on his representation to me that he was a lawyer and CPA who could assist BIEL in its efforts to comply with applicable securities laws. At all times during Drew Walker’s engagement with BIEL, he held himself out to be a lawyer and I believed that he was. On a daily basis, during his engagement, I regularly sought legal advice from Mr. Walker and reasonably relied on such advice.

4. Attached hereto at Exhibit 1 is a true and correct copy of excerpts of the investigative transcript of Robert Bedwell obtained from the Securities and Exchange Commission in this action.

5. Attached as Exhibit 2 is a true and correct copy of the Curriculum Vitae of Esther Ko, emails between Esther Ko and Joseph Noel, and Esther Ko and Mary Whelan, and a document titled “Bill and Hold Memo” prepared by Esther Ko for purposes of advising BIEL and its auditors regarding the revenue recognition issues related to the eMarkets and YesDTC 2009 transactions. My understanding is that such document was a draft memo. Esther Ko is an outside accountant engaged to assist the Company and its auditors in their efforts to complete the 2009 financial statements and audit for BIEL. The language in the footnote at the end of the document contains loose language not prepared by me or for purposes relating to this dispute.

6. The product sold to YesDTC in connection with the initial purchase, as defined in the December 30, 2009 Distributorship Agreement between YesDTC and BIEL, was delivered to YesDTC by BIEL on that date. Such product was maintained at BIEL's warehouse for YesDTC's benefit. It is true that the product sold to YesDTC never shipped. That is because YesDTC never obtained approval from Japan, its sole licensed territory, to sell the product in Japan, and abandoned the product at BIEL.

7. I testified at my investigative testimony that I thought that YesDTC's rights in the product had been forfeited. As a non-lawyer, I found myself caught in an SEC investigation deposition, without knowledge of the charges the SEC was contemplating or an ability to prepare with my counsel adequately for such deposition, offered a layperson's unprepared answer. Since that time, I have reviewed the Distributorship Agreement and, based thereon, understand that YesDTC retained ownership rights in the product purchased with the initial purchase, but had no license to sell it having failed to obtain approval from Japan to do so in Japan, YesDTC's one and only exclusive territory. If YesDTC had a lawful use for such product, it had every right to ship it from BIEL to wherever such lawful use would occur. For example, had YesDTC purchased a license from BIEL for a different distribution area, it could have sold the product in such distribution area without having to purchase it a second time. My testimony was intended to convey that simple truth. Under the circumstances, it would be unlawful for YesDTC to attempt to sell the purchased product in Japan. As a result, I testified that if YesDTC had sought shipment of the product in order to make illegal sales of the product in Japan or elsewhere, BIEL could not and would not participate in such unlawful activity.

8. YesDTC chose not to do that, and instead to abandon the product to BIEL. Accordingly, YesDTC never caused BIEL to ship that product.

9. Nevertheless, delivery did occur on December 31, 2009, because the transfer of title and risk from BIEL to YesDTC occurred on December 30, 2009 and YesDTC had paid \$100,000, and promised to pay the remaining \$50,000 within 90 days under the terms of the Distributorship Agreement. The revenue recognized was actually received, as reported, and is retained to this day by BIEL. Recognition of such sale in the 2009 Form 10K filed by BIEL was appropriate.

10. The goods sold to YesDTC were finished.

11. Delivery of product from BIEL to eMarkets was made to eMarkets throughout 2009, and all such deliveries were completed on or before December 31, 2009. Delivery occurred when title and risk of loss passed, and the finished product was segregated in BIEL's inventory subject to eMarkets' instructions for shipment.

12. As Mary Whelan attested, and told Esther Ko at the time, eMarkets expected to have BIEL ship its product to customers before the end of 2010. See Exhibit 2.

13. Attached hereto as Exhibit 3 is a true and correct copy of the Distribution Agreement between eMarkets and BIEL.

14. While the Distribution Agreement does not require that eMarkets purchase the specific units that were the subject of the bill and hold disclosures in BIEL's 2009 Form 10K, the general terms of the parties' Distribution Agreement applied and gave written structure to the parties' agreement pertaining to that specific bill and hold purchase.

15. All of the product related to the eMarkets bill and hold transaction referenced in the 2009 Form 10K was delivered in 2009. As to shipments, BIEL made 89 shipments in 2009 alone to eMarkets' customers. Although eMarkets has not yet completed its sales of all inventory purchased in 2009, more than 10,000 have shipped.

15. eMarkets' product was warehoused in a separate section of BIEL's warehouse does not render the contract invalid or the delivery ineffective. Indeed, such facts were fully disclosed to BIEL's auditor, Robert Bedwell, of Berenfeld, Spritzer, Shechter & Sheer, and later, Cherry Bekaert, and BIEL's attorneys, and BIEL relied on such professionals in making such disclosures.

16. The Division at pages 5, 7 and 26 of its Opposition, misrepresents that the products purchased by eMarkets were not finished, relying on excerpts of deposition transcript testimony of Mary Whelan and me, quoted out of context. The products sold by BIEL and purchased by eMarkets in 2009 as reflected in the 2009 Form 10K were in finished form. To the extent additional product components, shipping services and shipping costs were added to such finished products in connection with shipping them to particular eMarkets customers, per each customer's specifications, BIEL separately charged eMarkets and eMarkets separately compensated BIEL on case by case basis. These additional sales and charges are not included in the revenues recorded in the 2009 financial statements. In approximately 75% of the cases, no additional products or components were added to shipments made to eMarkets' customers because, in those cases, no additional components were requested by the customer. Although my testimony indicated that adhesive components were added, such comment would not apply to eMarkets' veterinary products. Because eMarkets' customers intended to use such products on animals with fur or hair, adhesives were not regularly, if ever, a component that was added to the eMarkets product that had been purchased from BIEL and was segregated in BIEL's warehouse.

17. Kelly Whelan was a consultant, at times, for BIEL, but never an employee. Kelly Whelan never received a salary or a W2 from BioElectronics.

18. The Division contends that “as further incentive, a lump sum of free trading BIEL shares” were paid to IBEX in exchange for making a loan. Opposition at 2. No such lump sum of free trading BIEL shares was made to IBEX as part of IBEX making a loan to BIEL.

19. The Division contends that IBEX’s convertible loan agreements “grant[ed] IBEX twice the number of free trading shares it had sold for BIEL’s benefit.” Opposition, at 3. IBEX never sold shares for BIEL’s benefit. IBEX sold stock for IBEX’s benefit; and later sold convertible notes for IBEX’s benefit. The convertible notes did not grant IBEX any shares – and certainly not “twice the number of free trading shares” sold. IBEX received only a convertible note for its loan. That convertible note allowed IBEX to convert debt into stock at a fixed conversion price of 50% discount to the market on date of investment. The convertible note did not state that such shares would be free trading. Instead, the shares would only become free trading after the convertible note and stock to be issued thereunder had been held for at least the statutory period required under Rule 144. At no time did BIEL grant IBEX twice the number of free trading shares that IBEX had sold in order to fund the loan. That simply never happened.

20. The Division contends that “IBEX was not the only entity used for these transactions. Starting in mid-2010, St. John’s entered into similar transactions.” Opposition, p. 3. The false implication is that only IBEX and St. John’s financed BIEL. BIEL borrowed substantial funds from several other lenders, including those not related in any way to me, on substantially similar terms.

21. I did not and had no authority to order the transfer agent to issue shares without restriction. I requested that it do so, as appropriate. But, it is my understanding that transfer agents have independent duties that require them to conduct due diligence regarding issuing shares without restriction. In each case, BIEL’s transfer agent required, among other things, a formal written legal opinion letter opining that issuance of the shares without restriction was

lawful. St. John's never sold shares to any so-called "Liquidating Entities" or in any manner described as a "private placement." IBEX sold its convertible debt to private third parties. St. John's sold its stock through a registered broker.

22. I did not prepare the statements contained in the "Bill and Hold Memo". That "Bill and Hold Memo" appears to be a draft. The Division falsely implies that the "Bill and Hold Memo" constituted the only statements made to the auditors by BIEL and me, such that if something was not stated in this draft memo, then it was never disclosed. That is not the case. The Bill and Hold memo was the result of many discussions and emails among Mary Whelan, Richard Staelin, Joseph Noel, Esther Ko, Robert Bedwell and others, the end result of which was the representations contained in BIEL's 2009 Form 10K, together with the certification by BIEL's independent auditor of the transactions being stated in compliance with Generally Accepted Accounting Principles.

23. Of course, BIEL would not have delivered the product purchased if YesDTC had intended to sell the product illegally, as BIEL would not knowingly participate in the commission of a violation of applicable law. The auditors presumably know that, and should presume that BIEL would not violate applicable law. Not telling the auditor that BIEL would not violate the law is not a material omission. Finally, there was no fact to disclose in terms of whether and when YesDTC could be shipped its purchased product, as the circumstances under which such products would be delivered are simply when doing so would be lawful. Had YesDTC sought possession of its products for legal and permissible use, such as Mr. Noel's own personal use, or, upon acquisition by YesDTC of another territory, use at a trade show or for sale of such products in that territory, BIEL would, of course, have delivered such product.

24. IBEX loaned money under the terms of convertible notes, held those notes often for three years or more, then sold some of that debt off to third parties in private sales. IBEX

still holds a great deal of BIEL debt. IBEX used the proceeds of such sales as IBEX saw fit. In some cases, IBEX loaned money to BIEL in exchange for new convertible debt, most of which IBEX still holds. IBEX never funneled any money to BIEL. IBEX did not receive “a new grant of unrestricted shares” when such loan was made. IBEX received convertible debt only. It would have the right to shares only upon conversion and, if IBEX chose not to convert, it would have the right to cash on redemption. The new convertible note did not “replace[] the shares IBEX sold.” IBEX sold its long-held convertible note. And, any new convertible note was not a replacement of the note sold, but a new convertible debt instrument issued in exchange and in the amount of any new loan made.

25. BIEL, IBEX and St. John’s went to great lengths to document their financing transactions, secure legal opinion letters, disclose in public filings and otherwise comply with the federal securities laws applicable to such transactions. The large number of transactions, coupled with IBEX’s dutiful compliance with the federal securities laws and timely reporting of such transactions, reflects my daughter’s, my wife’s and my sincere efforts to provide full disclosure and comply with the securities laws, not evade them. It is also noteworthy, again, that IBEX did not sell stock into the public market, as misrepresented, but sold convertible notes to private investors at a discount.

26. eMarkets had been purchasing and selling BIEL products throughout 2009, had existing customers at the time of the 2009 purchases from BIEL, and was actively negotiating to sell to large retail pet stores. In 2012, the Division was provided with over 400 emails in Mary Whelan’s documents with the details of shipments and copies of customer orders and invoices. 89 sales and shipments were made in 2009 from BIEL’s warehouse of eMarkets’ inventory to eMarkets’ customers.

27. The Division falsely implies that Respondents have fabricated evidence of delivery, shipment, possession, passing of title, transfer of risk of loans and a final binding agreement among the parties. Opposition, p. 18. That is simply not true.

28. BIEL does not have a class of securities registered pursuant to section 12 of the Act and is not required to file reports pursuant to section 15(d) of the Act, Section 13(b)(2) does not apply.

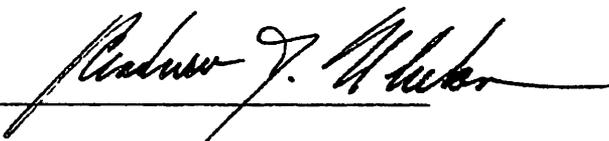
29. Footnote 1 of page 1 of the Opposition, and footnote 2 of page 2 of the Order instituting this proceeding, argues: “BioElectronics’ Section 12 reporting obligation arose as a result of its filing a Form 8A-12g on February 12, 2006 in conjunction with a registration statement on Form SB-2. The Form 8A-12g went effective by operation of law under Section 12(g) 60 days after filing, even though the Form SB-2 was subsequently withdrawn.” Notably, the Division cites no law and offers no evidence to support its assertion. That registration was withdrawn formally on March 18, 2007, well before any of the alleged transactions and disclosures made in this case. It is my understanding that when BIEL withdrew its registration statement, it was no longer effective for any purpose, including to impose reporting requirements arising from Section 13(b)(2).

30. BIEL’s countermeasures to ensure proper accounting, despite the financial inability to engage additional personnel, was to hire John Glass, CPA and Esther Ko, CPA as well as purported lawyer, Drew Walker, to assist me to compile the financial statements in accordance with GAAP. BIEL used outside competent accountants to compile the financial statements which were then reviewed by Robert Bedwell and other capable auditors through 2010 and the OTCMarkets examiners thereafter to assure compliance with applicable reporting guidelines. The Financial Statements are accompanied by either a completed audit certification or with an Opinion Letter attesting to the disclosures from the Company’s Securities Attorney.

31. Independent director, Richard Staelin, a highly qualified member of BIEL's Board, and a former Deputy Dean of the Fuqua School of Business at Duke University, provided meaningful oversight to me as BIEL's sole executive for much of this period as well as BIEL's accountants and auditor. BIEL's internal controls were adequate under the circumstances of a company with sparse resources and few transactions and resulted in accurate financial statements.

32. As is evident from Mr. Bedwell's testimony, pages 140-147, Mr. Bedwell was provided full and fair disclosure of all relevant facts pertaining to the so-called Bill and Hold transactions, including full access to the applicable contracts, the email exchanges with Esther Ko, an outside accountant engaged by BIEL to timely prepare the 2009 financial statements, and the cooperation of everyone involved, in order to ensure fair and accurate financial disclosures. Mr. Bedwell confirmed that where the customer says that he or she expects to ship the product before a date certain, that is sufficient, under some circumstances, such as this one, to constitute a fixed delivery schedule. I relied on Mr. Bedwell's advice in certifying BIEL's 2009 financial statements.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this declaration was executed this 10<sup>th</sup>. day of July 2016.



Andrew J. Whelan

1 UNITED STATES SECURITIES AND EXCHANGE COMMISSION

2  
3 In the Matter of: )  
4 ) File No. HO-11713-A  
5 BIOELECTRONICS CORP. )  
6  
7

8 WITNESS: Robert Bedwell

9 PAGES: 118 through 163

10 Place: Securities and Exchange Commission  
11 801 Brickell Avenue  
12 Suite 1800  
13 Miami, Florida 33131

14 DATE: Wednesday, August 27, 2014  
15

16 The above-entitled matter came on for hearing,  
17 pursuant to notice, at 9:44 a.m.  
18  
19  
20  
21

22  
23  
24 Diversified Reporting Services, Inc.

25 (202) 467-9200

1 APPEARANCES:

2  
3 On behalf of the Securities and Exchange Commission:

4 THOMAS ROGERS, ESQ.

5 JEFFREY ANDERSON, Office of the Chief Accountant

6 BRAD MROSKI, Assistant Chief Accountant

7 Securities and Exchange Commission

8 Division of Enforcement

9 100 F St. NE

10 Room 7531

11 Washington, DC 20549

12 202.551.4776

13  
14 On behalf of the Witness:

15 ROBERT BEDWELL, PRO SE

C O N T E N T S

WITNESS:	EXAMINATION
Robert Bedwell	123

EXHIBITS	DESCRIPTION	IDENTIFIED
87	Subpoena	124
88	Audit Program Document	156

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## P R O C E E D I N G S

1  
2 MR. ROGERS: We are on the record at 9:44 a.m., on  
3 August 27, 2014 at the Securities and Exchange Commission in  
4 Miami, Florida. The office is located at 801 Brickell Avenue,  
5 Miami, Florida 33131. The Commission has issued a formal order  
6 of investigation in this matter, which you were shown prior to  
7 the opening of the record. The formal order empowers me to  
8 administer the following oath.

9 Please raise your right hand.

10 Whereupon,

11 ROBERT BEDWELL,

12 having first been duly sworn to tell the truth, the whole truth,  
13 and nothing but the truth, was examined and testified as follows:

14 THE WITNESS: I do.

15 MR. ROGERS: Please state and spell your full name for the  
16 record, and give me your date of birth and Social Security  
17 Number as well.

18 THE WITNESS: Robert, R-O-B-E-R-T; Phillip, P-H-I-L-L-I-P;  
19 Bedwell, B-E-D-W-E-L-L; [REDACTED]; [REDACTED]; [REDACTED]

20 MR. ROGERS: My name is Tom Rogers; I am an attorney in the  
21 Enforcement Division of the U.S. Securities and Exchange  
22 Commission. With me are Brad Mroski and Jeffrey Anderson,  
23 accountants also in the SEC's enforcement division.

24 This is an investigation by the United States Securities  
25 Exchange Commission entitled: In the matter of BioElectronics,

1 File Number HO11713.

2 We are investigating whether there have been violations of  
3 certain provisions of federal securities law. However, the  
4 facts developed in this investigation might constitute  
5 violations of other federal, state, civil or criminal laws.  
6 Prior to opening the record, you were provided with a copy of  
7 the formal order of investigation in this matter.

8 The formal order will be available to you during the  
9 proceeding. If you -- have you had an opportunity to review the  
10 formal order?

11 THE WITNESS: Yes.

12 MR. ROGERS: Do you have any questions about the formal  
13 order.

14 THE WITNESS: No.

15 MR. ROGERS: Also, prior to the opening of the record, you  
16 were provided with a copy of the commission's supplemental  
17 information form, Form 1662, which has been pre-marked as  
18 Exhibit Number 1.

19 Have you had an opportunity to read Exhibit Number 1?

20 THE WITNESS: Yes.

21 MR. ROGERS: Do you have any questions about Exhibit Number  
22 1.

23 THE WITNESS: No.

24 MR. ROGERS: As I said before, you can leave those in front  
25 of you. At the end of your testimony, I am going to ask for

1 them back. You can look at them at any time. You will have  
2 them.

3 THE WITNESS: Uh-huh.

4 MR. ROGERS: Mr. Bedwell, are you represented by counsel  
5 here today?

6 THE WITNESS: No.

7 MR. ROGERS: Okay. I want you to be aware that you have  
8 the right to be represented by counsel. If at any time during  
9 the proceedings you wish to consult counsel, I will halt the  
10 testimony until have had enough time to consult with an  
11 attorney; is that clear.

12 THE WITNESS: Yes.

13 MR. ROGERS: Do you have any questions about this?

14 THE WITNESS: No.

15 MR. ROGERS: Okay. Have you taken any medications that  
16 might affect your ability to understand and respond to my  
17 questions today?

18 THE WITNESS: No.

19 MR. ROGERS: Is there any reason you cannot give full and  
20 complete testimony?

21 THE WITNESS: No.

22 EXAMINATION

23 BY MR. ROGERS:

24 Q I'm going to show you what has been pre-marked as  
25 Exhibit 87.

1 (SEC Exhibit No. 87 was marked  
2 for identification.)

3 Exhibit 87 is an August 8, 2014 subpoena issued to you  
4 in this investigation requesting testimony. Exhibit 87 requires  
5 you to appear for testimony. Is Exhibit 87 a copy of the  
6 subpoena pursuant to which you appeared here today?

7 A Yes.

8 Q Okay. Prior to our meeting today, I provided you with  
9 a disc containing the audit documents supplied by the accounting  
10 firm Cherry, Bekaert and Holland.

11 Did you bring the disc with you today?

12 A Yes.

13 Q Can I have it, please?

14 A Yes.

15 Q All right. For the record, you have handed that over  
16 to me.

17 Did you make any copies, electronic or otherwise of  
18 these documents?

19 A No.

20 Q Do you want to hold onto any of these documents during  
21 testimony? Did you print any out that you want to reference?

22 A No.

23 Q I think you did that during our first time together  
24 and didn't know if you wanted to do that again.

25 A Just made some notes, very brief notes.

1 Q So there's nothing for you to give back to me at the  
2 end of testimony; there are no other documents or no other  
3 discs, this is the entirety?

4 A There is nothing to give back to you, other than that.

5 Q Okay. Mr. Bedwell, have you discussed with anyone,  
6 other than your attorney -- have you discussed with anyone what  
7 your testimony here today will be?

8 A No. No. I did -- well, I did call BioElectronics  
9 just to find out what was going on with them. That's it, I  
10 called them.

11 Q Okay. Who did you talk to?

12 A To Andrew Whelan.

13 Q And when was that?

14 A About a week or two ago.

15 Q And what did you discuss?

16 A I told him I was subpoenaed for testimony for this.

17 Q What was his response?

18 A That he was surprised that an investigation was still  
19 ongoing. I told him, are you aware that an investigation is  
20 going? And he said, yes, that a number of other people within  
21 the company had been called for testimony.

22 Q Anything else?

23 A That's basically it. I said to him that -- you know,  
24 that I was subpoenaed, that this wasn't a voluntary testimony,  
25 and that was the extent of the conversation.

1 Q How long did the conversation last?

2 A About five minutes. He told me that he was going to  
3 talk to his daughter, Kelly Whelan, about it. About a week  
4 later I got a call from a California attorney that was  
5 representing him; I didn't take the call. I just -- it went to  
6 voicemail; I didn't respond to the call.

7 Q Okay. Did Mr. Whelan explain why he was going to talk  
8 to his daughter Kelly?

9 A No.

10 Q Okay. Was the attorney who called you Stan Morris?

11 A That name sounds familiar, yes; from a California  
12 firm.

13 Q Okay.

14 A I was not in my office to take the call, so it went  
15 straight to my voicemail.

16 Q Okay. And when did he call you?

17 A I don't know if it's been a week or two. It was  
18 several days after I called Whelan at BioElectronics.

19 Q And Mr. Morris does not represent you in this matter;  
20 is that correct?

21 A That's correct.

22 Q And just to be clear, do you have an attorney for this  
23 matter?

24 A No.

25 Q Okay.

1 MR. MROSKI: Is this that the first time you had spoken  
2 with Mr. Whelan regarding this investigation?

3 THE WITNESS: Yes.

4 MR. MROSKI: Was he aware that you had previously given  
5 testimony in this matter?

6 THE WITNESS: No. I didn't tell him that.

7 MR. MROSKI: Okay.

8 BY MR. ROGERS:

9 Q Before we begin the substantive questioning, I would  
10 like to review with you additional procedures that are to be  
11 followed during testimony. This is something we went over last  
12 time, but I think we should do it again.

13 The proceeding is being conducted on the record. If  
14 you would like to go off the record, let us know and if it's  
15 appropriate, we'll go off the record. Please understand that  
16 the court reporter will only go off the record at the SEC  
17 staff's direction.

18 You are under oath, so you must answer truthfully and  
19 accurately. Do you understand that providing false testimony  
20 can subject you to criminal sanctions?

21 A Yes.

22 Q The court reporter is taking down everything that's  
23 said today; it's important that you speak clearly and that I  
24 speak clearly and we all speak clearly. Because the proceedings  
25 are being sound-recorded, please keep up your voice and respond

1 to all questions verbally, rather than through gestures.

2 Is that clear?

3 A Yes.

4 Q We both cannot speak at the same time. Please wait  
5 for me to finish my questions before you start to answer, and I  
6 will give you the same courtesy. If you do not understand any  
7 of my questions, please ask me to clarify or rephrase in some  
8 fashion so that you can understand.

9 Is that clear?

10 A Yes.

11 Q Okay. And I will remind you that you have the right  
12 to have counsel with you today. If at any time you wish to  
13 consult counsel, we'll pause the testimony and give you a chance  
14 to do so.

15 Is that clear?

16 A Yes.

17 Q Okay. And I think I went through all of these  
18 instructions as if I was going to ask all of the questions;  
19 actually, all of us are going to ask questions, so they pertain  
20 to all of us. I think that's obvious, but I'm going state it  
21 for the record.

22 Do you understand these procedures?

23 A Yes.

24 Q Do you have any questions about any of them?

25 A No.

1 Q Okay. Prior to our last meeting, October 30, 2013,  
2 you were asked to complete a background questionnaire. At the  
3 time, that questionnaire was entered into the record as Exhibit  
4 65. I'm going to hand you 65 now.

5 Just take a minute and look at that. I am going to  
6 ask you a few questions to see if we need to update any of it.  
7 Let me know when you are ready.

8 A Okay.

9 Q Do you recognize the document?

10 A Yes.

11 Q I think there have been a couple -- at least there's  
12 one update that I am aware of. I think you have a different  
13 address now.

14 A Yes.

15 Q Is that correct?

16 A Yes.

17 Q So your current address is the address that's on the  
18 subpoena; why don't you go ahead and give it to us for the  
19 record.

20 A [REDACTED], Coral Springs, Florida

21 [REDACTED].

22 Q Okay. Is there anything else that needs to be  
23 updated?

24 A No.

25 Q Telephone number?

1           A     Telephone number, cell number is the same. The home  
2 number is changed. I no longer have a home telephone number; I  
3 just have a cell phone number.

4           Q     The bank accounts, brokerage accounts?

5           A     Securities account, I have a 401(k) now with my  
6 present employer.

7           Q     We are going to go into that, I think, in a minute  
8 separately.

9                     Why don't you state for the record who is your current  
10 employer.

11          A     Mallah Furman; M-A-L-L-A-H, F-U-R-M-A-N.

12          Q     On Page 5, there's Question 18, have you ever  
13 testified in proceedings conducted by the staff Securities  
14 Exchange Commission; you checked no. I don't think that's  
15 accurate.

16          A     Yeah. I didn't remember whether we discussed at that  
17 meeting that I remembered being here in this office before. The  
18 testimony that I gave was related to a company called Banyan  
19 Investments, I think it was B-A-N-Y-A-N. So I -- and then, of  
20 course, the previous testimony that I gave --

21          Q     Do you remember what year that was?

22          A     -- with BioElectronics.

23                     No.

24          Q     Let me update -- have you ever been deposed in  
25 connection with any court proceedings? You said yes, and it was

1 Rucks v. Cherry, Bekaert, and Holland.

2 Anything else to add to that?

3 A Not that I recall.

4 Q And you've never been named as a defendant by the SEC  
5 or any other federal agency; is that correct?

6 A No.

7 Q Are your account licenses up to date?

8 A Yes.

9 Q And that's with what state?

10 A Florida.

11 Q Okay. That's all I have on 65.

12 I'm going to ask you to pass that just so we can keep  
13 our documents straight.

14 MR. MROSKI: Just with your regards to your current  
15 employer, what's your current position?

16 THE WITNESS: I'm an audit principal.

17 MR. MROSKI: Okay. And the firm itself, what's the nature  
18 of their clients? Public clients? Non-public clients?

19 THE WITNESS: Both.

20 MR. MROSKI: Do you serve as principal on any public  
21 clients?

22 THE WITNESS: Yes.

23 MR. ROGERS: I'm going to turn over the questioning to Mr.  
24 Mroski at this point.

25 EXAMINATION

1 BY MR. MROSKI:

2 Q Mr. Bedwell, for my benefit and for Mr. Anderson's  
3 benefit, since we were not here last time, I know that you went  
4 through your background and previous employment. It's going to  
5 be helpful for us just to get an understanding, and I will -- if  
6 it's okay with you, I will refer to Berenfeld, Spritzer,  
7 Shechter & Sheer as just Berenfeld.

8 A Okay. Yes.

9 Q And the same for Cherry, Bekaert and Holland, I'll  
10 just -- Cherry Bekaert or CBH, if that's okay.

11 It's our understanding that you were with Berenfeld,  
12 and Berenfeld got acquired by Cherry Bekaert; is that correct?

13 A Berenfeld dissolved. In December of 2005, the  
14 partnership dissolved. The partners joined Cherry Bekaert  
15 almost simultaneously. It was not considered a merger or an  
16 acquisition. So that, technically, is not correct that  
17 Berenfeld was acquired by CBH.

18 Q Okay. And you said December 2005?

19 A I think -- I'm trying to remember the dates. It's  
20 December 2010, I think it was.

21 Q December 2010?

22 A Yeah. I joined Berenfeld in 2005.

23 Q Okay. So you joined Berenfeld in 2005; for all  
24 intents and purposes, in 2010 Berenfeld just dissolved?

25 A Correct.

1 Q And then Cherry Bekaert just picked up a lot of the --  
2 A Partners and employees.  
3 Q The previous employees of Berenfeld?  
4 A Yes.  
5 Q Okay. Who were you with prior to Berenfeld?  
6 A With Bloom, Gettis, Habib, Silver and Terrone, located  
7 in Miami.  
8 Q Located in Miami.  
9 And did that firm do any work with BioElectronics?  
10 A No.  
11 Q Okay. When did BioElectronics become a Berenfeld  
12 client?  
13 A I don't know if it was 2006 or 2007. I don't  
14 remember.  
15 Q Okay. And were you on the account from day one?  
16 A Yes.  
17 Q And how did they come to be a client of Berenfeld?  
18 A My partner, Tracey Winetraub, had a prior business  
19 relationship with the president of BioElectronics, Andrew  
20 Whelan.  
21 Q Okay. What was the nature of that relationship?  
22 A I don't recall.  
23 Q Was Tracey a partner --  
24 A Yes.  
25 Q -- of the firm?

1           Was he an audit partner?

2           A     Yes.

3           Q     Any particular reason he didn't serve as the lead  
4 partner on the engagement?

5           A     I don't really know, other than...

6           Q     Let me phrase it a different way: How did you come to  
7 serve as lead partner on the engagement?

8           A     Tracey assigned the account to me. Tracey was the  
9 lead audit partner. He was head of the department, and he  
10 assigned the account to me.

11          Q     Okay. And that was approximately 2007?

12          A     Six or seven, yes. I don't remember exactly.

13          Q     And then in 2010 when Berenfeld dissolved and Cherry  
14 Bekaert took over the BioElectronics audit -- that's -- that's  
15 my understanding, correct me if I am wrong.

16          A     Correct.

17          Q     Did you remain as the main audit partner for Cherry  
18 Bekaert?

19          A     I was actually the copartner. There was another  
20 partner out of our Roanoke office. His name was Randall Burton,  
21 B-U-R-T-O-N. Randall actually ran the account; given the  
22 proximity between the two offices, it was assigned to his  
23 office --

24          Q     Okay.

25          A     -- and his staff.

1 Q And when you say "copartner," what is a copartner?

2 A We agreed to -- that I would serve as the engagement  
3 quality control partner on the engagement and review the  
4 engagement once it was completed. I was also involved in the  
5 planning at the onset of the engagement.

6 Q Okay. So in PCOB standards language, Mr. Burton was  
7 the lead client service partner and you were the quality control  
8 partner?

9 A Yes.

10 Q Okay. And in 2009, when Berenfeld still had the audit  
11 and the firm was still in existence, Berenfeld signed the audit  
12 opinion for the 2009-10K?

13 A Yes.

14 Q Did Cherry Bekaert ever issue an opinion on  
15 BioElectronics financials?

16 A No.

17 Q Okay. And for the 2009 audit opinion, you were the  
18 lead client service partner and the signing partner on that?

19 A Yes.

20 Q I'd would like to go to -- you mentioned that -- I'm  
21 sorry -- Tracey, I forgot his last name.

22 A Winetraub.

23 Q Had the relationship with Mr. Whelan; did you have any  
24 relationship with Mr. Stalin or anybody else at the company --

25 A No.

1 Q -- prior to the engagement?

2 A No.

3 MR. ANDERSON: Where did Berenfeld have offices?

4 THE WITNESS: Our offices were in Coral Gables, Florida,  
5 and Fort Lauderdale area.

6 MR. ANDERSON: And for Cherry Bekaert?

7 THE WITNESS: Same two offices, Coral Gables and Fort  
8 Lauderdale.

9 BY MR. MROSKI:

10 Q Why when Cherry Bekaert picked you up and other  
11 Berenfeld employees, why was the decision made not to have you  
12 continue as the lead client service partner?

13 A As I noted before, the proximity to the offices  
14 between Florida, South Florida and the Roanoke office.  
15 Mr. Burton also had public company experience that was assigned  
16 to his office.

17 Q How does that differ from the proximity issue prior to  
18 Cherry Bekaert? I mean, you've always been in Miami, right?

19 A Correct.

20 Q Okay. So was there anything else that lead to him  
21 taking over as the partner? Was it a time on account issue,  
22 or...

23 A No. No. I have no knowledge of what the decision  
24 making was other than the reason that was given to me, which was  
25 the proximity.

1 Q Okay. And who told you that? Who gave you that  
2 reason?

3 A Ray Quentin, who was the technical service partner in  
4 the firm, Cherry Bekaert.

5 Q Okay. So it was his decision to make that change?

6 A Yes. It was a new client for Cherry Bekaert, so they  
7 made that decision internally.

8 Q Okay. And did Mr. Burton have any prior relationship  
9 with Mr. Whelan or BioElectronics or anybody at the company?

10 A No. Not that I am aware of.

11 Q And what was BioElectronics' response to the change in  
12 the lead client service partner?

13 A They were fine. I mean, they still could contact me  
14 if they had questions or, you know, if they had concerns about  
15 the service that was being provided to them.

16 Q They weren't unhappy, to your knowledge --

17 A No.

18 Q -- with the change?

19 Okay. I would like to talk a little bit about a  
20 couple of the bill and hold transactions that you guys discussed  
21 at your previous testimony. I am happy that you had a chance to  
22 review the work papers Mr. Rogers sent to you.

23 Thinking back to 2009, the first question I want to  
24 just get an understanding of is: How did you become aware of  
25 the existence of these transactions?

1 I am referring specifically to YesDTC and E-markets.

2 A How did I become aware of them?

3 Q Yes.

4 A Through, you know, the examination of the county  
5 records, as part of the planning for the engagement, they  
6 provided us copies of contracts or agreements that they had with  
7 the two companies that you noted.

8 Q Do you recall, in that particular year, did the  
9 planning for the engagement occur prior to the end of the fiscal  
10 year, or did it occur subsequent to the end of the fiscal year?

11 A I don't remember when -- I don't remember the dates,  
12 the exact dates.

13 Q Okay. So this is something, though, that you  
14 identified or Berenfeld identified, as opposed to BioElectronics  
15 coming to you and saying, we've entered into bill and hold  
16 transactions?

17 A That's correct. I don't recall them specifically  
18 characterizing them as bill and hold transactions. I remember  
19 discussions in the planning meetings where we looked at the  
20 characteristics of the agreements. And after inquiries with  
21 management, we determined that they met the criteria or the  
22 characteristics of that type of transaction.

23 MR. ANDERSON: How did management characterize those  
24 transactions?

25 THE WITNESS: I don't recall those specific discussions.

1 You know, they were significant transactions, so we concentrated  
2 on them during the client -- in terms of -- since they  
3 constituted a significant portion of the revenues for that  
4 particular year.

5 MR. ANDERSON: Did you get the impression that management  
6 felt those two contracts for YesDTC and E-markets were not any  
7 different than any of their other revenue contracts and styles?

8 THE WITNESS: Looking back at it, you know, through the  
9 benefit of hindsight, I believe that they didn't think they were  
10 out of character, out of any of their other transactions.

11 We, you know, had issued management letters talking --  
12 previous to that and obviously subsequent to, you know, the  
13 completion of the engagement -- about the quality of their  
14 accounting staff; specifically their understanding of U.S. GAAP.

15 And so I think that initially they didn't think that they  
16 were out of character. I think that's a correct  
17 characterization.

18 BY MR. MROSKI:

19 Q I'm going to show you what's been previously marked as  
20 Exhibit 19. This looks like a memo from Andy Whelan. It's  
21 titled, Bill and Hold Memo, Audit of 2013.

22 Take a second to familiarize yourself with that.

23 A Okay.

24 Q Why did Mr. Whelan write this memo?

25 A This is in response to our questions concerning the

1 character of these two transactions E-Markets and YesDTC.

2 Q Okay.

3 MR. ROGERS: Before we go any further, I would like to ask  
4 a question.

5 Is it your belief that Andrew Whelan wrote this memo?

6 THE WITNESS: No.

7 MR. ROGERS: Who do you think wrote it?

8 THE WITNESS: They had hired an accounting consultant, I  
9 believe her name was Esther Ko, K-O, to assist them in some of  
10 the reporting issues that they were trying to catch up, in terms  
11 of, you know, past filings and so forth; get their financial  
12 statements and accounting records up to date.

13 They hired Ms. Ko and she -- I believe she produced this  
14 memo on behalf of Andy Whelan. I don't have any  
15 firsthand-knowledge of that, but that's my belief both at the  
16 time and looking back at it in hindsight.

17 MR. ROGERS: Why do you think it was Ms. Ko and not  
18 Mr. Whelan?

19 THE WITNESS: It's my understanding of Mr. Whelan was that  
20 he didn't have the -- either the knowledge or resources to put  
21 together a technical memo of this, you know, in reference to  
22 the -- you know, the codification, for example; in references to  
23 the codification.

24 MR. ROGERS: There is no date on this memo; do you remember  
25 when you first saw it?

1 THE WITNESS: I don't remember the exact date, no.

2 MR. ROGERS: Can you give me an proximate date?

3 THE WITNESS: It would have been some time during the --  
4 you know, the course of the audit in response to our questions.  
5 So it would have been some time after planning and before  
6 conclusion.

7 MR. ROGERS: Okay. So you think you got this memo prior to  
8 the conclusion of the audit?

9 THE WITNESS: Yes.

10 MR. ROGERS: Okay. And can you give me a date for the  
11 conclusion of the audit?

12 THE WITNESS: No. Unfortunately, I didn't concentrate on  
13 dates, you know, in terms of when I was reviewing the work  
14 papers; so I can only give you approximations. I think the 2009  
15 audit was conducted some time during 2010; I don't remember the  
16 exact dates.

17 MR. ROGERS: Do you think the audit was completed before  
18 the company filed its 2009-10-K?

19 THE WITNESS: Yes. So it would have been prior to  
20 March 2010.

21 MR. ROGERS: Okay. A general issue: I think you said the  
22 company was trying to catch up with its accounting records; is  
23 that what you said?

24 THE WITNESS: Yes.

25 MR. ROGERS: Was it your impression that the company's

1 accounting procedures and controls were less than tidy?

2 THE WITNESS: I think our management letter for that year  
3 speaks for itself. I mean, we cited a number of weaknesses,  
4 some of which had to do with, you know, the quality of the  
5 accounting staff, their knowledge, the timeliness of -- I don't  
6 recall whether or not, looking back at it in hindsight, in terms  
7 of timeliness of closings and so forth.

8 MR. ROGERS: Thank you. I'm going to let Mr. Mroski take  
9 the lead.

10 BY MR. MROSKI:

11 Q Going back to this memo, beginning on the bottom of  
12 the first page and then onto the second page, it lists out  
13 general revenue recognition criteria, and then Subsection B is  
14 bill and hold revenue criteria?

15 A Uh-huh. Yes.

16 Q Take a minute to look at those and let me know if that  
17 is consistent with your understanding of the criteria, to  
18 recognize revenue on a bill and hold agreement or transaction.

19 A Yes. Generally speaking, yes, it is.

20 Q Okay.

21 A In accordance with my understanding of the accounting  
22 standards.

23 Q Okay. So just to kind of summarize it: It's fair to  
24 say -- you know, just to really summarize it: It's fair to say  
25 that through the course of the audit, you guys got the YesDTC

1 and E-Market agreements, per your firm file, you identified it  
2 as a potential bill and hold transaction, you discussed it with  
3 management and asked them to write a memo supporting the  
4 accounting treatment for bill and hold; is that correct?

5 A Correct. We questioned the revenue recognition,  
6 related to the fact, initially, that the delivery of goods  
7 hadn't occurred. And so we initially characterized this as a  
8 sales cutoff issue, in terms of, you know, all the criteria of  
9 revenue recognition. And they came back to us and indicated  
10 they believed that it met the criteria. We asked them to give  
11 us a memo to support that -- their assertion.

12 Q Okay. These handwritten notes on Page 2, are those  
13 yours?

14 A No.

15 Q Do you know who made those notations?

16 A No.

17 Q Let's talk about some of the bill and hold criteria,  
18 and specifically what Berenfeld did to test management's  
19 assertion with respect to these items.

20 I guess looking at Number 3, the buyer, not the  
21 seller, must request that the transaction be on a bill and hold  
22 basis.

23 What did you guys do, from an audit standpoint, to  
24 test that assertion?

25 A My recollection is we looked at correspondence between

1 the buyer and seller to see whether or not that that fact could  
2 be corroborated.

3 Q Okay.

4 A Management was asserting that the buyer had  
5 requested -- both buyers had requested that the transaction be  
6 on this basis.

7 Q Okay. So you looked at communication between  
8 BioElectronics management and these customers, like e-mails  
9 or...

10 A Yeah. Whatever I -- I don't recall the specific media  
11 or the form of the correspondence, but...

12 Q Okay. There must be a fixed -- and back to the  
13 handwritten notes: Do you recall those notation being on there  
14 when you originally received this memo from the company?

15 A No.

16 Q Okay. Number 4, it stipulates that there must be a  
17 fixed schedule for the delivery of the goods.

18 Was that something that was present in the agreements?

19 A My recollection is there was a stated date, in terms  
20 of delivery.

21 Q Okay. Was it a stated date in terms of delivery, or  
22 was it more certain amount of product must be taken by this  
23 date?

24 A I don't remember what our specific decision making was  
25 on it. I do recall that there was a date provided, a schedule

1 provided for the taking -- taking possession of the goods.

2 Q Okay. Actually, if you flip over to the third page,  
3 it's down in the bill and hold criteria section, Item Number 4;  
4 is this the work of Berenfeld?

5 A No.

6 Q Who put this spreadsheet schedule together?

7 A This was part of the document that was provided to us  
8 by the company.

9 Q Okay. If you look at the column titled E-Markets,  
10 under Item Number 4 under Bill and Hold Criteria, it says that  
11 the goods will be shipped by December 31st 2010.

12 Do you see that?

13 A Yes.

14 Q In your opinion, is that a fixed delivery schedule?

15 A You know, I can't comment on that. I don't recall the  
16 nature of our conversations to follow up on that -- on that  
17 final comment there.

18 Q Where would we be able to see evidence of your  
19 followup on that comment from an audit work paper standpoint?

20 A I don't remember. I think we had our own memo, or we,  
21 you know, discussion in there about these comments. I don't  
22 remember whether it was attached to this memo, but there was --  
23 you know, our consideration of all of the criteria and our  
24 efforts that we took to corroborate those assertions.

25 Q Maybe even just pulling it back a little, just on it's

1 face, without regards to what Berenfeld may or may not have  
2 done, just on the representation here: The goods will be  
3 shipped by December 31, 2010. In your opinion, would that  
4 constitute a fixed delivery schedule, without any other  
5 information?

6 A I can't make a comment on that, because I would not  
7 have gone with this just from the face of the representation.  
8 This is a client memo; this is not our -- this is not our  
9 document. So, as I said, we must have done some followup. I  
10 don't remember exactly what it was, but we did follow up to  
11 ensure that what the client telling us has been represented to  
12 them by the customer, it was, in fact, what the customer  
13 represented to them.

14 Q I understand. I am just trying to be more general.  
15 And just generally speaking, would more -- would it be necessary  
16 to be more specific, in your opinion, in terms of a delivery  
17 date, to meet that fixed delivery schedule criteria; without  
18 regards to this transaction, just generally speaking?

19 A Again, I would want to see a specific schedule that  
20 says we're going to take delivery or such-and-such number of  
21 units by such-and-such date.

22 Q Okay. And so, in your opinion, that would constitute  
23 a fixed delivery schedule?

24 A I'm not sure what you are asking me there.

25 Q Well, let me put it to you -- it's not a trick

1 question. Let me put it to you like this: If I say I'm going  
2 to take 100 units within the next three months, would that  
3 constitute a fixed delivery schedule in your opinion?

4 A No. It has to be taken in the context of a  
5 transaction, as it's been explained to us. So if, for whatever  
6 reason, the customer, for example, has their own customers that  
7 say, okay, we'll take X number of units by such-and-such a date,  
8 and the customer doesn't have the warehouse to store the goods,  
9 you know, my client's customer, then I may be willing to accept  
10 an explanation that I am taking delivery of X number of units by  
11 this date, because the resale customer won't take delivery until  
12 a certain point in time.

13 So if you're talking in a theoretical standpoint, then  
14 that would be, I believe, an acceptable explanation --

15 Q Okay.

16 A -- for why the customer would request a bill and hold  
17 transaction.

18 Q And in your opinion that would -- the scenario that  
19 you outlined, that would meet bill and hold transaction  
20 criteria?

21 A Again, it's a fixed schedule for delivery of the  
22 goods, it must be reasonable. The reasonableness, from that  
23 standpoint, would be in the context of the transaction; the  
24 resale customer doesn't want to take possession of the goods  
25 until a certain date. I think it's very common.

1 I have -- you know, not necessarily bill and hold  
2 transactions, but situations where a supplier will make an order  
3 based on the timing of the sales. If it's a product that is  
4 sold during a holiday season, I don't expect the customers to  
5 take orders throughout the year. So I think the explanations  
6 provided there are reasonable.

7 Q Okay.

8 MR. ANDERSON: Did you ever receive a more specific  
9 delivery schedule from BioElectronics?

10 THE WITNESS: I don't recall.

11 BY MR. MROSKI:

12 Q Going back to the second page of the memo, Item  
13 Number 5 states: The seller must not have retained any specific  
14 performance obligations.

15 I am actually on Page 2. You can look at that one  
16 too, because it lays it out in both places. Were you aware of  
17 any additional performance obligations that BioElectronics had  
18 with respect to these two agreements?

19 A No.

20 Q It was your understanding that the goods were  
21 finished, all of the fixtures were on them, nothing else needed  
22 to be done?

23 A No. The management had represented that they had  
24 segregated the goods; the goods were complete, they were in  
25 their storage area and were set aside and segregated for the

1 customer. So there was no other performance obligations. The  
2 goods were sold in the condition that they left in the storage  
3 area of the warehouse.

4 Q What did -- you said management had represented --  
5 what did Berenfeld do to test management's representation that  
6 the goods were complete?

7 A Again, just going on recollection, we asked where the  
8 goods were stored and segregated in the warehouse, and the  
9 client showed us where they were. I mean, we are looking at  
10 boxed units of patches. So there is really not much, in a way,  
11 that has to be done other than to package them.

12 Q Are there any finishing activities that you're aware  
13 of that have to be done, like fixing Velcro or labeling packages  
14 or anything of that nature?

15 A Again, if we saw the packages were boxed and in a  
16 condition represented to us as being ready to be shipped, I  
17 don't think there is any reason to go beyond that, in terms of  
18 an explanation. It would be similar to any other warehousing  
19 situation where I am observing boxes of finished goods that are  
20 ready to be shipped to customers. And my recollection of the  
21 staff that observed that for us told us that they were boxed and  
22 ready to be shipped.

23 Q Okay.

24 MR. ANDERSON: Who was that staff member?

25 THE WITNESS: Two staff members, Brian Lifestein and Angie

1 Slaney, S-L-A-N-E-Y.

2 MR. ANDERSON: And they physically went to the warehouse  
3 and examined the --

4 THE WITNESS: Yes, the storage area was adjacent to the  
5 offices where they were working.

6 BY MR. MROSKI:

7 Q Oh, so it wasn't in the same building, the storage?

8 A It's a storage room that's adjacent to the offices; I  
9 mean, you could literally walk from the offices into the storage  
10 area.

11 Q Okay. One room connected to the next?

12 A Yeah.

13 Q Okay. And you had mentioned in your previous  
14 testimony, if memory serves, that it was a relatively small  
15 area; is that correct?

16 A Yes.

17 Q Okay. So you have actually, kind of, started into  
18 next question which is the six criteria listed here, which is --

19 MR. ROGERS: Before we go there, I want to go back to five.

20 I want to direct your attention to the third page of  
21 Exhibit 19. And under Performance Obligations, there is a  
22 column for each E-markets and Yes, which is YesDTC, that's my  
23 understanding; is that your understanding as well?

24 THE WITNESS: Yes.

25 MR. ROGERS: Okay. The fifth row there, under performance

1 obligations, it's filled in with yes, there is no additional  
2 performance obligation, and then there is an asterisk under the  
3 Yes column. And the asterisk down on the bottom refers to a  
4 contingency clause, that the rights granted by company to  
5 distributor are made under the assumption that regulatory  
6 clearance to sell the company's product in Japan would be  
7 relatively easily obtained. Should distributor be unable to  
8 gain regulatory clearance within six months of contract  
9 execution, this agreement is voidable at the option of the  
10 distributor. That's end of the quote.

11           Were you aware of the contingency that's being discussed  
12 there?

13           THE WITNESS: I don't recall this specific discussion, but  
14 we reviewed this document.

15           MR. ROGERS: And I am the only one on this side of the  
16 table who is not an accountant, so I may not use the right  
17 words, and if these other two would like to jump in, please do.

18           But that indicates to me that the distributor, YesDTC,  
19 could walk away from this contract at any time within six months  
20 of signing it.

21           So how is that -- how does that qualify as clear revenue  
22 from an auditor's point of view?

23           THE WITNESS: Again, I don't recall our specific  
24 discussions about this.

25           MR. ROGERS: What would you have done to follow up on this

1 clause?

2 THE WITNESS: We would have looked at the contingency and  
3 had a discussion about the contingency and whether, in fact, it  
4 had been overcome in order for the criteria to pass.

5 MR. ROGERS: I need more specifics on that. What would  
6 that look like?

7 THE WITNESS: I can't tell you. I don't know what the -- I  
8 don't remember what the specific regulatory issue that they're  
9 bringing up here; I don't recall what that was.

10 BY MR. MROSKI:

11 Q Well, it says on the second line: Obtaining  
12 regulatory clearance to sell the company's products in Japan.

13 A I'm not sure what you want me to answer there. What  
14 your response -- what my response should be there.

15 Q Is it your understanding that the company, YesDTC, did  
16 not have regulatory clearance to sell BioElectronics' products  
17 in Japan when this memo was written?

18 A No. That's not my understanding.

19 Q You said you reviewed this document; do you interpret  
20 that language a different way?

21 A Again, I don't recall the nature of the discussions or  
22 our followup on this.

23 MR. ROGERS: Where would we look in the auditing records to  
24 find something indicating that questions were raised about  
25 whether YesDTC had obtained regulatory approval -- Japanese

1 regulatory approval?

2 THE WITNESS: Within the work papers associated with this  
3 memo.

4 MR. ROGERS: I guess what I need is something a little more  
5 specific. I am not an accountant. I --

6 THE WITNESS: I can't provide that to you. I don't -- I  
7 looked at as many of the work papers and documents as I could  
8 within the disc. There was numerous repetitions of documents  
9 and so forth in there, so it became mind-numbing to try to  
10 review every single document in there. So I don't recall where  
11 it's listed there.

12 MR. ROGERS: I understand that. And, I guess, my question  
13 is a little bit more general. I don't understand the filing  
14 system for work papers. And it's my understanding, maybe that's  
15 wrong, that it's a fairly standard system, that the software  
16 used is one that's used from one accounting firm to another. So  
17 all I am looking for is some sort of heading, some sort of  
18 general file where I can go and look for it.

19 THE WITNESS: There are work papers specific to this  
20 transaction titled Bill and Hold Sales, where our followup  
21 inquiries, what we did corroborate any explanations that were  
22 provided to us by management, any documents that we examined,  
23 those are all specifically referenced on the work paper.

24 I can't offer you anything other than that, because I  
25 didn't retain anything beyond what's -- what was in the work

1 papers. So whatever Cherry, Bekaert and Holland has provided  
2 you is in the work papers.

3 MR. ROGERS: And is it -- do you believe that you were the  
4 one who followed up with management on this type of question, or  
5 do you think it was someone else?

6 THE WITNESS: I don't remember.

7 MR. ROGERS: If it wasn't you, who would it be?

8 THE WITNESS: It would have been the manager on the  
9 engagement, Brain Lifestein, or a senior or some conjunction.

10 MR. ROGERS: You need to give me those --

11 THE WITNESS: Angela Slaney and Brian Lifestein.

12 BY MR. MROSKI:

13 Q With suspect to YesDTC, did they ever obtain clearance  
14 to sell the product in Japan?

15 A I don't recall.

16 Q You don't recall.

17 And you're referencing the revenue work papers and the bill  
18 and hold work papers, and I will tell you that I've been through  
19 those. So if the followup of these items does not exist in  
20 those work papers, is it fair to say that they weren't --  
21 everything that was done was represented in the work papers? Is  
22 that fair to say?

23 A I don't know.

24 Q Okay. Going down to Item Number 6, goods are  
25 segregated; what's your understanding of what that means?

1           A     That they are held in an area that's easily  
2 identified -- identifiable to the viewer.

3           Q     Okay. Separate and apart from any other inventory in  
4 the warehouse?

5           A     We asked, specifically, that question; I do remember  
6 that.

7           Q     Who did you ask that question to?

8           A     To -- I don't remember who the person was that was in  
9 charge of the warehouse at that time. It was an operations  
10 person that worked with us during our inventory work.

11          Q     Okay. Did you guys independently verify the goods  
12 were segregated?

13          A     I don't know how you want me to respond to that.

14          Q     Did anybody from the audit firm go and look and see if  
15 the goods were physically -- did they just ask somebody --

16          A     I previously testified that both Brian Lifestein and  
17 Angela Slaney were at the location. They responded back to me  
18 that they were pointed to specific goods that were identified as  
19 part of this transaction.

20          Q     Okay. Just bear with me, because I wasn't here for  
21 your previous testimony.

22          A     Okay. That's fine. I had mentioned that just a few  
23 moments ago.

24          Q     My question was very specific, though. I understand  
25 that they were onsite, but this is a specific audit procedure

1 that I am asking if it was performed, which is going and  
2 physically verifying and saying, yes, as an auditor, I see these  
3 goods are segregated. My question was: Did that occur, or was  
4 it a representation from the person at the warehouse that says,  
5 yeah, those goods are segregated?

6 A As part of my review of the work papers and the work  
7 that my team performed in the field, I asked them specifically  
8 whether or not they observed these items as being physically  
9 separated; they indicated yes.

10 Q Okay. Did you personally, physically view the  
11 segregated items?

12 A No.

13 MR. MROSKI: I am going to have this marked. I believe  
14 we're on 88.

15 (Exhibit Number 88 was marked for  
16 identification.)

17 BY MR. MROSKI:

18 Q I am going to show you a copy of the Audit Program For  
19 Inventory Observation for the 2009 fiscal audit.

20 You can go ahead and take a second to review that.

21 A Okay.

22 Q Who is A.S.?

23 A Angel Slaney.

24 Q Okay. And she was the senior on the account, you  
25 said?

1 MR. ROGERS: Just for the record, where are you reading  
2 A.S.?

3 MR. MROSKI: There is a column where specific procedures  
4 are listed in the main column, and there is a column, performed  
5 by, and date. And throughout the document you see A.S., and  
6 then the date, January 25th, 2010.

7 BY MR. MROSKI:

8 Q If you flip over to the third page, I am looking down  
9 at the very bottom, at Item Number 7.

10 Does that appear to you that Angela Slaney is  
11 representing there is no bill and hold transactions?

12 A Yes.

13 Q Okay. Why would that be?

14 A Because I think at the time, we weren't aware that  
15 these were -- these transactions were either characterized as  
16 bill and hold, or we were still waiting for the technical  
17 support for what they purported them to be. So when we  
18 initially did the inventory observation, I don't think that we  
19 were specifically attuned to looking for inventory that was  
20 segregated.

21 Q How did you go back and make sure it was segregated at  
22 that point?

23 A We were in the field, and once we knew that this  
24 transaction was being characterized as such, we asked them to  
25 show us where the inventory was and how it was segregated.

1 Q But at that point, you couldn't have been aware that  
2 it was segregated as of the year end?

3 A We performed our inventory procedures after year end,  
4 so...

5 Q As of January 25, 2010, almost a month after year end,  
6 you guys haven't determined that there were bill and hold  
7 transactions?

8 A I don't remember the dates that we did the inventory  
9 observation. The dates of the signoff may not necessarily be  
10 the dates that we did the inventory observation. So I don't  
11 know if this January 25th date is, in fact, the date that we  
12 performed the inventory observation.

13 Q Did you review this work paper?

14 A Yes.

15 Q How can we tell?

16 A There would have been a signoff in the -- the work  
17 papers are electronic; there would have been a signoff in the  
18 electrical binder.

19 Q Do we have a copy of its -- I know what you are  
20 talking about. It's almost a homepage.

21 A There were screenshots of the various audit work paper  
22 indexes that were provide by Cherry Bekaert on that disc.

23 Q Okay. How long --

24 A Could we go off the record for just a moment?

25 MR. ROGERS: Are you in the middle of something?

1 MR. MROSKI: No. That's fine. We can take a couple of  
2 minutes.

3 MR. ROGERS: All right. Let's go off the record at 10:40.

4 (Whereupon, a discussion was held off the record.)

5 MR. ROGERS: We are back on the record at 10:52.

6 Mr. Bedwell, while we were off the record, we had a discussion  
7 about how to proceed; is that correct?

8 THE WITNESS: Yes.

9 MR. ROGERS: And I am going to attempt to sum it up here,  
10 and please correct me if you think that's wrong.

11 You have requested that we give you some sort of comfort as  
12 to where we are going with the questioning and what your role is  
13 here today; is that correct?

14 THE WITNESS: Yes.

15 MR. ROGERS: Okay. We cannot give you that comfort. Given  
16 that we're at that point, you have said that you would feel  
17 comfortable if you had an attorney present; is that correct?

18 THE WITNESS: Yes.

19 MR. ROGERS: Okay. So what we'll do is we'll convene --  
20 end testimony for today, and I will give you a chance to find an  
21 attorney, and have that attorney contact me and then we'll  
22 reconvene. I'll most likely issue a new subpoena, and then  
23 we'll reconvene at some time in the near future.

24 Is that acceptable to you?

25 THE WITNESS: Yes.

Please make these changes and then issue the memo as final (i.e., without the draft watermark).

Thanks,

Bob



**Robert P. Bedwell, CPA**  
AUDIT PARTNER  
BERENFELD SPRITZER SHECHTER & SHEER LLP  
401 East Las Olas Blvd.,  
Suite 1090  
Fort Lauderdale, FL 33301  
954.728.3740 main  
954.728.3742 direct  
954.728.3798 fax  
Rbedwell@berensfeldllp.com  
[berensfeldllp.com](http://berensfeldllp.com)

---

**From:** esther ko [mailto: ]  
**Sent:** Tuesday, March 23, 2010 12:10 PM  
**To:** Robert P. Bedwell (x1702)  
**Cc:** Brian Leitstein (x1713); Sherri  
**Subject:** Bill and Hold Memo

Hi Bob,

Attached is the Company's drafted memo on the bill and hold transactions. Please review and let me know if you have any comments.

Thanks,  
Esther

\*\*\*\*\*

NOTICE: To ensure compliance with Treasury Regulations (31 CFR Part 10, §10.35), we inform you that any tax advice contained in this correspondence was not intended or written by us to be used, and cannot be used by you or anyone else, for the purpose of avoiding penalties imposed by the Internal Revenue Code.

**BioElectronics  
Bill and Hold Memo  
Audit of 2009**

From: Andy Whelan, President  
To: Work paper

**PURPOSE**

To identify the amount of bill and hold revenue for the year ended of December 31, 2009 and analyze if such amount is qualified to recognize as revenue according to GAAP.

**BACKGROUND**

During 2009, the Company recognized bill and hold revenue related to two customers, eMarkets Group, LLC<sup>1</sup> ("eMarkets") and YesDTC, Inc.<sup>2</sup> ("YES"). The following summarizes the related financial information:

<b>Bill and Hold revenue for the year ended December 31, 2009:</b>				
		eMarkets	YES	TOTAL
Sales	a	215,853	150,000	365,853
COGS		58,679	27,900	86,579
Gross Margin		157,174	122,100	279,274
Collection as at 12.31.09	b	105,018	100,000	205,018
Collection yet to receive	a-b	110,835	50,000	160,835

**ACCOUNTING PRONOUNCEMENT**

According to ASC 605-10-599 SEC Materials, SEC summarizes the revenue recognition criteria (as previously discussed in SAB 101), and sets forth criteria under FN17 to be met in order to recognize revenue when delivery has not occurred.

A) General revenue recognition criteria:

1. Persuasive evidence of an arrangement exists, FN3

<sup>1</sup> eMarkets Group, LLC (eMarkets) is a company owned and controlled by a member of the board of directors and sister of the company's president. The agreement provides for eMarkets to be the exclusive distributor of the Company's line of products to customers in certain countries outside of the United States for a period of 3 years. The distribution agreement lists the prices to be paid for the company's products by eMarkets and provides for the Company to provide training and customer support at its own cost to support the distributor's sales function. The terms and conditions of the agreement are comparable to any independent distributors of the Company.

<sup>2</sup> YesDTC, Inc. (YES) is BioElectronics' distributor in Japan.

2. Delivery has occurred or services have been rendered, FN4.
3. The seller's price to the buyer is fixed or determinable, FN5 and
4. Collectibility is reasonably assured. FN6

**B) Bill and Hold Revenue Criteria:**

1. The risks of ownership must have passed to the buyer;
2. The customer must have made a fixed commitment to purchase the goods, preferably in written documentation;
3. The buyer, not the seller, must request that the transaction be on a bill and hold basis. FN18 The buyer must have a substantial business purpose for ordering the goods on a bill and hold basis;

FN18 Such requests typically should be set forth in writing by the buyer.

4. There must be a fixed schedule for delivery of the goods. The date for delivery must be reasonable and must be consistent with the buyer's business purpose (e. g., storage periods are customary in the industry);
5. The seller must not have retained any specific performance obligations such that the earning process is not complete;
6. The ordered goods must have been segregated from the seller's inventory and not be subject to being used to fill other orders; and
7. The product must be complete and ready for shipment.

**RATIONALE**

See attached table.

**CONCLUSION**

Based upon the discussion above, the Company determines that it is appropriate to record the bill and hold revenue of \$365,853 and the related COGS of \$86,579 for the year ended December 31, 2009.

	eMarkets	YES
<b>Revenue Recognition Criteria</b>		
1 Persuasive Evidence of an Arrangement Exists	Yes - Final agreement is executed by the properly authorized personnel of the buyer and seller	Yes - Final agreement is executed by the properly authorized personnel of the buyer and seller
2 Delivery Has Occurred or Services Have Been Rendered	No - See Bill and Hold criteria below	No - See Bill and Hold criteria below
3 The Seller's Price to the Buyer is Fixed or Determinable	Yes - The pricing is according to the agreement	Yes - The pricing is according to the agreement
4 Collectibility is Reasonably Assured	Yes - \$105K of \$216K (49%) has been collected as at 12.31.09. Since eMarkets has the exclusive right to sell BioElectronics' products in the Veterinary Market, it is unlikely that eMarkets will default payment which triggers the cancellation of the agreement.	Yes - \$100K of \$150K (67%) has been collected as at 12.31.09. Since YES has the exclusive right to sell BioElectronics' products in Japan, it is unlikely that YES will default payment which triggers the cancellation of the agreement.
<b>Bill and Hold Criteria</b>		
1 Risks - The risks of ownership must have passed to the buyer	Yes - Confirmed by Mary Whelan, President of eMarkets	Yes - Confirmed by Joe Noel, President of YES. (NOTE 1)
2 Fixed Commitment - The customer must have made a fixed commitment to purchase the goods, preferably in written documentation	Yes - There is an executed contract and an invoice.	Yes - There is an executed contract and an invoice.
3 Buyer Requested - The buyer, not the seller, must request that the transaction be on a bill and hold basis. The buyer must have a substantial business purpose for ordering the goods on a bill and hold basis	Yes - Confirmed by Mary Whelan, President of eMarkets. She does not have an FDA/ISO certified warehouse or fulfillment capability. BioElectronics has such property and therefore, the transactions were requested to be done on a bill and hold basis.	Yes - Confirmed by Joe Noel, President of YES. As explained in his correspondence, YES' primary market is Japan and the products have to be shipped from an ISO certified warehouse. BioElectronics has such a site but YES does not.
4 Fixed Schedule - There must be a fixed schedule for delivery of the goods. The date for delivery must be reasonable and must be consistent with the buyer's business purpose (e.g., storage periods are customary in the industry)	Yes - Confirmed by Mary Whelan, President of eMarkets. The goods will be shipped by December 31, 2010.	Yes - Confirmed by Joe Noel, President of YES. YES is planned to take all of the 15,000 units by December 31, 2010. (NOTE 2)
5 Performance Obligations - The seller must not have retained any specific performance obligations such that the earning process is not complete	Yes - There is no additional performance obligation	Yes - There is no additional performance obligation*
6 Goods are Segregated - The ordered goods must have been segregated from the seller's inventory and not be subject to being used to fill other orders	Yes - The goods are packaged and segregated from the remaining of the inventory.	Yes - The goods are packaged and segregated from the remaining of the inventory.
7 Ready for Shipment - The product must be complete and ready for shipment	Yes - All goods are packaged and ready for shipment	Yes - All goods are packaged and ready for shipment

\* There is no additional performance obligations for the seller but there is a contingency listed in the Distributorship Agreement, which said "the rights granted by Company to Distributor are made under the assumption that regulatory clearance to sell the Company's products in Japan can be relatively easily obtained. Should Distributor be unable to gain regulatory clearance within six months of contract execution, this agreement is voidable at the option of Distributor." Per the Company's understanding, our products are classified as level one (with the least amount of scrutiny) in the Japanese regulatory clearance process. Therefore, it is not likely that the Distributor cannot obtain such clearance. In any event that the clearance cannot be obtained, the Company's position is that this clause only applies to future sales and will not impact sales that have already made.

1 Since the risks of loss have passed to the buyers, the inventory is removed from the inventory balance at year-end and recorded as cost of good sold. This will ensure that gross profit is not overstated. The related COGS recorded was \$86,579.

2 The holding period is through December 31, 2010 and will be delivered on or before December 31, 2010. The holding period (or dates of delivery) is reasonable and it is consistent with the buyer's business purpose.

**Andrew Whelan**

---

**From:** Tarra Hilton <thilton@bielcorp.com>  
**Sent:** Friday, August 22, 2014 3:51 PM  
**To:** 'Whelan Andrew'  
**Subject:** FW: Bill and Hold Memo

*Tarra Hilton*  
*Administrative Manager*  
BioElectronics Corporation  
4539 Metropolitan Court  
Frederick, MD 21704  
P: 301-874-4890 F: 301-874-6935  
[thilton@bielcorp.com](mailto:thilton@bielcorp.com)  
Skype: Tarra.Hilton.Bioelectronics

---

**From:** Robert P. Bedwell (x1702) [<mailto:Rbedwell@berenfildllp.com>]  
**Sent:** Friday, March 26, 2010 3:00 PM  
**To:** 'esther ko'  
**Cc:** Brian Leitstein (x1713); 'Sherri'  
**Subject:** RE: Bill and Hold Memo

Esther

Thanks for preparing and forwarding the bill and hold memos for the sales arrangements with eMarkets and Yes DTC, Inc.

The memos are right on point, relative to the accounting standards involved and the reporting of such transactions in the financial statements. We have two suggestions to further clarify some points in the Bill and Hold Criteria spreadsheet.

1. Risks - If the risks of loss have passed to the buyer, then the inventory should be removed from the inventory balance at year-end and recorded as cost of good sold. This will ensure that gross profit is not overstated. Please state this on the memo and prepare supporting documentation of this.
2. Fixed schedule – document the reasonableness of the holding period (or dates of delivery) and that the holding period is consistent with the buyer's business purpose.

**Andrew Whelan**

---

**From:** Tarra Hilton <thilton@bielcorp.com>  
**Sent:** Friday, August 22, 2014 3:53 PM  
**To:** 'Whelan Andrew'  
**Subject:** FW: Bill and Hold Memo  
**Attachments:** Bill and Hold Memo.doc; Bill and Hold Criteria.xls

*Tarra Hilton*  
*Administrative Manager*  
BioElectronics Corporation  
4539 Metropolitan Court  
Frederick, MD 21704  
P: 301-874-4890 F: 301-874-6935  
[thilton@bielcorp.com](mailto:thilton@bielcorp.com)  
Skype: Tarra.Hilton.Bioelectronics

---

**From:** esther ko [REDACTED]  
**Sent:** Saturday, March 27, 2010 8:23 AM  
**To:** Robert P. Bedwell (x1702)  
**Cc:** Brian Leitstein (x1713); 'Sherri'; [awhelan@bielcorp.com](mailto:awhelan@bielcorp.com)  
**Subject:** RE: Bill and Hold Memo

Hi Bob,

Thanks for your comments. Please see the revised memo.

Esther

--- On Fri, 3/26/10, Robert P. Bedwell (x1702) <[Rbedwell@berenfildllp.com](mailto:Rbedwell@berenfildllp.com)> wrote:

From: Robert P. Bedwell (x1702) <[Rbedwell@berenfildllp.com](mailto:Rbedwell@berenfildllp.com)>  
Subject: RE: Bill and Hold Memo

To: "esther ko" <[REDACTED]>  
Cc: "Brian Leitstein (x1713)" <Bleitstein@berenfildllp.com>, "Sherri" <smercer@bielcorp.com>  
Date: Friday, March 26, 2010, 3:00 PM

Esther

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2. Fixed schedule – document the reasonableness of the holding period (or dates of delivery) and that the holding period is consistent with the buyer's business purpose.

Please make these changes and then issue the memo as final (i.e., without the draft watermark).

Thanks,

Bob

**Andrew Whelan**

---

**From:** Tarra Hilton <thilton@bielcorp.com>  
**Sent:** Friday, August 22, 2014 3:56 PM  
**To:** 'Whelan Andrew'  
**Subject:** FW: Bill and Hold Memo  
**Attachments:** image001.gif

*Tarra Hilton*  
*Administrative Manager*

BioElectronics Corporation  
4539 Metropolitan Court  
Frederick, MD 21704  
P: 301-874-4890 F: 301-874-6935  
thilton@bielcorp.com  
Skype: Tarra.Hilton.Bioelectronics

---

**From:** Robert P. Bedwell (x1702) [mailto:Pbedwell@berenfildllp.com]  
**Sent:** Monday, March 29, 2010 10:41 AM  
**To:** 'esther ko'  
**Cc:** Brian Leitstein (x1713); 'Sherri'; 'awhelan@bielcorp.com'  
**Subject:** RE: Bill and Hold Memo

Thanks for forwarding this. We have no other comments.



**Robert P. Bedwell, CPA**  
AUDIT PARTNER  
BERENFELD SPRITZER SHECHTER & SHEER LLP  
401 East Las Olas Blvd.,  
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Fort Lauderdale, FL 33301  
954.728.3740 main  
954.728.3742 direct  
954.728.3798 fax  
[Rbedwell@berenfildllp.com](mailto:Rbedwell@berenfildllp.com)

---

[berenfildllp.com](mailto:berenfildllp.com)

---

---

**From:** esther ko [REDACTED]  
**Sent:** Saturday, March 27, 2010 8:23 AM  
**To:** Robert P. Bedwell (x1702)  
**Cc:** Brian Leitstein (x1713); 'Sherri'; [awhelan@bielcorp.com](mailto:awhelan@bielcorp.com)  
**Subject:** RE: Bill and Hold Memo

Hi Bob,

Thanks for your comments. Please see the revised memo.

Esther

--- On Fri, 3/26/10, Robert P. Bedwell (x1702) <[Rbedwell@berenfildllp.com](mailto:Rbedwell@berenfildllp.com)> wrote:

From: Robert P. Bedwell (x1702) <[Rbedwell@berenfildllp.com](mailto:Rbedwell@berenfildllp.com)>  
Subject: RE: Bill and Hold Memo  
To: "esther ko" [REDACTED]  
Cc: "Brian Leitstein (x1713)" <[Bleitstein@berenfildllp.com](mailto:Bleitstein@berenfildllp.com)>, "Sherri" <[smercer@bielcorp.com](mailto:smercer@bielcorp.com)>  
Date: Friday, March 26, 2010, 3:00 PM

Esther

Thanks for preparing and forwarding the bill and hold memos for the sales arrangements with eMarkets and Yes DTC, Inc.

The memos are right on point, relative to the accounting standards involved and the reporting of such transactions in the financial statements.

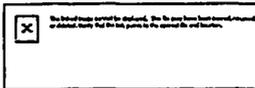
We have two suggestions to further clarify some points in the Bill and Hold Criteria spreadsheet.

1. Risks - If the risks of loss have passed to the buyer, then the inventory should be removed from the inventory balance at year-end and recorded as cost of good sold. This will ensure that gross profit is not overstated. Please state this on the memo and prepare supporting documentation of this.
2. Fixed schedule – document the reasonableness of the holding period (or dates of delivery) and that the holding period is consistent with the buyer's business purpose.

Please make these changes and then issue the memo as final (i.e., without the draft watermark).

Thanks,

Bob



**Robert P. Bedwell, CPA**  
AUDIT PARTNER

BERENFELD SPRITZER SHECHTER & SHEER LLP  
401 East Las Olas Blvd.,

Suite 1090  
Fort Lauderdale, FL 33301  
954.728.3740 main

---

From: esther ko [REDACTED]  
Subject: Re: eMarkets' transaction with BioElectronics  
Date: March 23, 2010 11:59:43 AM EDT  
To: Mary Whelan [REDACTED]  
Cc: awhelan@bielcorp.com, Sherri <smerc@bielcorp.com>

---

Thanks very much Mary.

so it means that you held titles of the goods as at 12.31.09 even though they are still housed in BioElectronics' warehouse? Just want to confirm on this piece of info.

Esther

--- On Tue, 3/23/10, Mary Whelan [REDACTED] wrote:

From: Mary Whelan [REDACTED]  
Subject: Re: eMarkets' transaction with BioElectronics  
To: "esther ko" [REDACTED]  
Cc: awhelan@bielcorp.com, "Sherri" <smerc@bielcorp.com>  
Date: Tuesday, March 23, 2010, 10:51 AM

Dear Esther,

I am sorry for the delay in responding to your request for clarification. I have been out of town and busy with customer requests.

Here is the clarification you requested:

As part of my agreement to develop the veterinary market for BioElectronics products, BioElectronics agreed to drop ship orders to customers on demand. I do not have an FDA/ISO certified warehouse or fulfillment capability. When quantities of the models that are of most interest to the Equine market became available (BioElectronics has discontinued manufacturing these models), I decided to make advance purchases of inventory of those models (the Square patch and the Crescent patch) in order to insure that I had adequate supplies on hand for my customers. I anticipate that the goods will have been sold and shipped to customers by December 31, 2010.

I expect there may be other special orders that I will purchase from BioElectronics, take title to the goods, but keep in their certified warehouse in the future.

Let me know if you need any further clarification.

Mary K. Whelan  
President  
eMarkets Group  
551-200-5586  
[REDACTED]

On Mar 18, 2010, at 2:15 PM, esther ko wrote:

> Hi Mary,

>  
> I'm the accounting consultant (Esther Ko) who is working with BioElectronics and Andy re: SEC reporting and audit coordination.  
>  
> As of December 31, 2009, we understand that there was \$215,853 of BioElectronics' products which have already been sold to eMarkets but not yet delivered to eMarkets. Could you please confirm / explain the following for the audit purpose related to the above transaction?  
>  
> 1) The titles of the above goods have been transferred to eMarkets, even though BioElectronics still physically keep the goods.  
>  
> 2) It is eMarkets' request to have BioElectronics store the goods. Please kindly provide the business purpose for ordering the goods but not yet have them delivered.  
>  
> 3) When will eMarkets expect the shipment of the goods? Is there a fixed delivery schedule?  
>  
> We would appreciate it if you can respond to us at your earliest convenience, because the above information is critical for our audit process.  
>  
> Best regards,  
> Esther  
>  
>  
>  
>  
>

Tarra Hilton

---

From: esther ko [REDACTED]  
Sent: Friday, March 19, 2010 11:31 AM  
To: Sherri  
Subject: Fw: YesDTC's transaction with BioElectronics

FYI

--- On Thu, 3/18/10, JOE NOEL <[REDACTED]> wrote:

From: JOE NOEL <[REDACTED]>  
Subject: Fw: YesDTC's transaction with BioElectronics  
To: [REDACTED]  
Cc: [awhelan@bielcorp.com](mailto:awhelan@bielcorp.com)  
Date: Thursday, March 18, 2010, 5:33 PM

Ester:

Please see below for your information requested.

1) The titles of the above goods have been transferred to YesDTC, even though BioElectronics still physically keep the goods.

Yes that is correct. We have taken title and will be listing as inventory on our balance sheet.

2) It is YesDTC's request to have BioElectronics store the goods. Please kindly provide the business purpose for ordering the goods but not yet have them delivered.

Our primary market is Japan. We are touting the fact that the product is shipped from an ISO certified warehouse. BIEL has such a site. We do not. Therefore, it make good business sense to keep the product there and draw it done as it is needed.

3) When will YesDTC expect the shipment of the goods? Please provide a fixed delivery schedule if available.

We will draw the inventory as needed for the reasons stated above.

Joe Noel  
Emerging Growth Research, LLP  
(925) 922-2560  
Don't Miss Out on Our Award Winning Stock Recommendations!  
Follow me on Twitter - It's Easy to Sign Up - Go to:  
<http://twitter.com/i/f03f331c01ad14ba8f0865a10f60d502025a0c90>  
My Twitter user name is joenelstocks  
Visit my blog for the latest on all my picks - Don't miss it!  
[www.joenelstocks.com](http://www.joenelstocks.com)

----- Forwarded Message -----

**From:** Andrew J. Whelan <[awhelan@bielcorp.com](mailto:awhelan@bielcorp.com)>  
**To:** JOE NOEL <[REDACTED]>  
**Sent:** Thu, March 18, 2010 11:48:26 AM  
**Subject:** FW: YesDTC's transaction with BioElectronics

Andrew J. Whelan  
BioElectronics Corporation  
4539 Metropolitan Court  
Frederick MD 21704  
(301) 874-4890 office  
(301) 874-6935 fax

[www.bielcorp.com](http://www.bielcorp.com)

-----Original Message-----

**From:** esther ko (mailto:[REDACTED])  
**Sent:** Thursday, March 18, 2010 2:18 PM  
**To:** [REDACTED]  
**Cc:** Sherri; [awhelan@bielcorp.com](mailto:awhelan@bielcorp.com)  
**Subject:** YesDTC's transaction with BioElectronics

Dear Joe:

I'm an accounting consultant (Esther Ko) who is working with BioElectronics and Andy re: SEC reporting and audit coordination.

As of December 31, 2009, we understand that there was \$150,000 of BioElectronics' products which have already been sold to YesDTC but not yet delivered to YesDTC. Could you please confirm / explain the following for the audit purpose related to the above transaction?

- 1) The titles of the above goods have been transferred to YesDTC, even though BioElectronics still physically keep the goods.
- 2) It is YesDTC's request to have BioElectronics store the goods. Please kindly provide the business purpose for ordering the goods but not yet have them delivered.
- 3) When will YesDTC expect the shipment of the goods? Please provide a fixed delivery schedule if available.

We would appreciate it if you can respond to us at your earliest convenience, because the above information is critical for our audit process.

Best regards,  
Esther

Ms. Esther Yee-Chung, Ko, CPA, CFE, CFF  
2335 McGregor Court, Vienna, VA 22182  
703-599-2525

Esther is an experienced financial and forensic accountant and auditor with over twelve years of public and private accounting experience. Currently, Esther is the Director of Internal Audit Department in FHI Development 360, an international non-government organization (NGO) responsible for leading internal audits, investigations and special projects, such as internal control design and implementation, risk assessment, compliance and governance related matters. Prior to that, Esther was an experienced manager at PricewaterhouseCoopers (PwC). Esther had three years of consulting services experience at PwC. In that capacity, she managed complex engagements for internal audit and Sarbanes Oxley Act (SOX) implementation, litigation and enforcement support, enhanced due diligence, accounting fraud investigations, and designing anti-corruption and governance compliance programs. Esther's domestic and international experience spans multiple sectors including financial services, pharmaceuticals, manufacturing, energy, utilities, food services, real estate, NGO and government.

Prior to her consulting practice, Esther managed large external SEC audit engagements which included leading audit teams, identifying and resolving technical accounting and auditing matters, and communicating with senior company officers and board members about audit progress and results. Esther also managed audit-related engagements, including analyzing the impact of merger and acquisition transactions. Her technical accounting expertise spans the most complicated accounting areas, including revenue recognition, stock-based compensation, cost capitalization, intangible and goodwill assets, business combinations, fair value measurement, OMB Circular and government contracts. Esther also has technical depth in a number of auditing and reporting areas, such as segment reporting, internal controls over financial reporting, and aspects of the SOX. Esther has demonstrated management capabilities, having coordinated multi-location audits throughout the US and overseas. Prior to joining PwC, Esther was a senior external auditor at Arthur Andersen and an intern at Goldman Sachs.

Esther is a U.S. citizen, is tri-lingual (fluent in English, Mandarin and Cantonese), and holds the following professional credentials: Certified Public Accountant (CPA), Certified Fraud Examiner (CFE) and Certified in Financial Forensics (CFF).

## I. WORK EXPERIENCE

May 2010 to Present      Director of Internal Audit FHI Development 360 (Legacy AED), Washington DC

### *Investigation:*

- Report directly to the Chief Compliance Officer & Audit Committee members
- AED has been suspended from receiving US Government from further funding in December 2010: Heavily involved in crisis management as the leader of the Internal Audit Department. Working extremely closely with lawyers, clients, regulators and Board of Directors.
- The Lead investigator and forensic accountant on internal investigations, including liaison with Inspector General of the respective government agencies, legal counsel, Board of Directors, and senior management of the organization.
- Investigating and quantifying questionable costs. Interviewing personnel; designing, implementing, and interpreting forensic tests and results. Preparing reports summarizing pertinent facts and developed remediation plans. Countries

Ms. Esther Yee-Chung, Ko

covered included USA, Middle East and Africa. Involved in over 30 internal investigations. Reporting results to the Board, clients and regulators.

*Compliance & Education*

- Promote compliance and ethical awareness throughout the organization through presentations and trainings provided to Board of Directors, senior executives to staff.
- Develop training materials related to compliance, ethics and antifraud, such as time reporting, codes of ethics, internal audit charter and fraud awareness.

*Internal Audit Assignments:*

- Leading and managing audits in various countries, including Asia, Africa and Middle East. Reviewing internal audit programs and results. Preparing internal audit reports. Reporting results to the Board, clients and regulators.

*Special Projects:*

- Leading and managing projects of internal control design and implementation, risk assessment and governance related matters.

**March 2010 to May 2010 Independent Consultant, Washington DC**

- Served as a trusted advisor to companies over SEC reporting (10K, 10Q and S3 etc), internal control design, implementation and review, Sarbanes Oxley and OMB Circular Act A-123 design and implementation, risk assessment, internal audit and governance related matters.

**April 2006 to October 2009 Experienced Manager, PwC Advisory Practice, Washington, D.C.**

*Compliance & Education:*

- Designed and implemented internal audit and SOX policies and procedures. Identified red flags and remediation.
- Assessed SEC registrants internal control environment by applying COSO and ERM frameworks.
- Assessed multinational financial institution's compliance risks related to anti-money laundering, anti-corruption, information privacy and security, and international trade regulations. Performed analysis of the institution's compliance program in relation to leading regulatory and risk assessment practices and provided recommendations.
- Performed due diligence review of compliance with the Foreign Corrupt Practices Act (FCPA) for a leading U.S. based computer information consulting company's potential acquisition of three entities located in China. The due diligence review, conducted in China, involved interviews of senior management personnel to identify anti-bribery/FCPA compliance risk and analysis and evaluation of accounting records in relation to FCPA's books and records requirements. Reported findings to counsel.
- Led over fifty trainings and workshops for client personnel and PwC professionals in the U.S., China, and South Korea offices on awareness of fraud, fraud risks and the role of a robust compliance program.

*Dispute & Analysis:*

- Assessed and evaluated purchase price dispute claims.
- Advised accounting expert witnesses in enforcement cases brought by an accounting regulator. Cases involved allegations of intentional misstatements of revenue and backdating of stock options, each of which included multi-million dollar restatements, officer terminations, and settlements. Analyzed audit working papers, testimony, periodic annual and interim filings, and other evidence. Drafted expert witness opinions and rebuttals. Prepared expert witnesses for deposition.

*Investigation:*

- Investigated and measured estimates of loss in a multi-million dollar employee embezzlement scheme involving fraudulent refunds. Interviewed personnel; designed, implemented, and interpreted forensic tests and results. Prepared reports summarizing pertinent facts and developed remediation plans.
- Investigated assertions and allegations involving governmental agency. Interviewed personnel, including chief financial officer and members of the office of inspector general. Coordinated preparation and presentation of findings and recommendations with audit team.

**March 2001 to April 2006**

**Manager, PwC Assurance Practice, McLean, VA**

- Reviewed and Commented SEC filings (such as 10K & 10Q) of clients
- Clients included public and private companies and NGO in healthcare, pharmaceutical, venture capital, government contracting, and not for profit industries.
- Analyzed and reviewed business processes and internal controls using COSO and Enterprise Risk Management guidelines for SEC registrants. Areas of particular emphasis included: cash and investments, accounts receivable and sales, accounts payable and purchases, payroll, governance, and treasury. Prepared recommendations and remediation actions for senior officers. Prepared reports about the results for the audit committee.
- Analyzed complicated and emerging accounting and auditing issues such as revenue recognition (SAB 101), cost capitalization, intangible and goodwill assets, stock-based compensation, fair value measurement, business combinations, segment reporting, government contracting, and SEC reporting requirements.
- Performed audits of an NGO on location in India and Guatemala, reviewed internal audit programs and results, prepared management recommendation letters, and led audit meetings with local and corporate management and executive committees.
- Performed internal quality reviews (PwC) and peer reviews (KPMG) of audits domestically and internationally. Procedures included reviewing audit work papers. Reviewed matters in relation to SEC and PCAOB requirements.
- Managed and coordinated multinational audits with over 15 PwC worldwide offices.
- Presented continuing professional education course to PwC professionals.
- Promoted to manager level position in September 2004.

*Ms. Esther Yee-Chung, Ko*

- Jan 1999 to Feb 2001**      **Senior Associate, Arthur Andersen & Company, Hong Kong, China**
- Performed audits of financial statements, procedures in connection with initial public offerings, and due diligence projects.
  - Client portfolio included public companies listed on the Hong Kong Stock Exchange.
- June to Dec 1998**      **Intern, Goldman Sachs (Asia), Financial Control Department**
- Prepared accounting records for general ledger posting and year-end budget materials.
- 1997 Summer**      **Intern, Coopers & Lybrand LLP, Washington D.C.**

## **II. EDUCATION**

- 1995 to 1998**      **Chinese University of Hong Kong**
- First Honor in Business Administration (Majored in Professional Accountancy), Chinese University of Hong Kong.
- 1996 to 1997**      **Georgetown University, Washington D.C.**
- Attended one-year exchange program from CUHK to Georgetown University, Washington DC.

## **III. PROFESSIONAL CREDENTIALS AND ACCOUNTING SOFTWARE EXPERIENCE**

- U.S. citizen
- Licensed Certified Public Accountant (CPA) for nine years in Washington, Maryland, District of Columbia and Virginia
- Certified Fraud Examiner (CFE)
- Certified in Financial Forensics (CFF)
- Passed Certified Financial Analyst (CFA) Level II and a prospective candidate for CFA Level III

## **IV. FOREIGN LANGUAGES**

- Cantonese - fluent in speaking, writing and reading
- Mandarin - fluent in speaking, writing and reading

Please make these changes and then issue the memo as final (i.e., without the draft watermark).

Thanks,

Bob



**Robert P. Bedwell, CPA**  
AUDIT PARTNER  
BERENFELD SPRITZER SHECHTER & SHEER LLP  
401 East Las Olas Blvd.,  
Suite 1090  
Fort Lauderdale, FL 33301  
954.728.3740 main  
954.728.3742 direct  
954.728.3798 fax  
Rbedwell@berenfeldllp.com  
[berenfeldllp.com](http://berenfeldllp.com)

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**From:** esther ko [REDACTED]  
**Sent:** Tuesday, March 23, 2010 12:10 PM  
**To:** Robert P. Bedwell (x1702)  
**Cc:** Brian Leitstein (x1713); Sherri  
**Subject:** Bill and Hold Memo

Hi Bob,

Attached is the Company's drafted memo on the bill and hold transactions. Please review and let me know if you have any comments.

Thanks,  
Esther

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NOTICE: To ensure compliance with Treasury Regulations (31 CFR Part 10, §10.35), we inform you that any tax advice contained in this correspondence was not intended or written by us to be used, and cannot be used by you or anyone else, for the purpose of avoiding penalties imposed by the Internal Revenue Code.

## DISTRIBUTION AGREEMENT

This DISTRIBUTION AGREEMENT is entered into as of February 9, 2009 (the "Effective Date") between BIOELECTRONICS CORPORATION, a Maryland corporation with offices at 4539 Metropolitan Court, Frederick Maryland 21704 (the "Company"), and the eMarkets Group, LLC, a Nevada registered limited liability company, with offices at 19 Hamilton Drive, East, North Caldwell, NJ 07006 (the "Distributor").

### RECITALS

A. The Company has developed a proprietary line of products designed to deliver pulsed electromagnetic field therapy through microchip-embedded dermal patch applications for the treatment of a wide range of conditions by promoting soft tissue healing on a cost-effective basis.

B. The Company's line of Products is distributed and the method of affixing the device to the body, under the ActiPatch™ Therapy and the RecoveryRx trade name in models differentiated primarily by the size of the unit, associated method to affix the device to the body, the disease being treated, or the field of use. (the "ActiPatch Models").

C. The Company desires to have the Distributor develop demand for and sell Products for use within the Field of Use (as defined hereunder) worldwide with the exclusion of the territories listed in Schedule C. and to appoint the Distributor to act as the exclusive distributor of Products in the Territory upon the terms and conditions of this Agreement. The Distributor will develop, maintain, and defend a unique product Distributor Brand Name for the veterinary market including all retail outlets focused on sales of products for pets, horses and other domestic animals.

D. The parties desire to provide for the Distributor's promotion and sale of Products to the Veterinary Market on the terms and conditions of this Agreement.

Accordingly, the parties hereby agree as follows:

### AGREEMENT

#### 1. *Definitions and Construction.*

1.1 *Definitions.* As used in this Agreement, the following terms have the respective meanings set forth below:

"ActiPatch Brand Features" has the meaning set forth in Recital B.

"ActiPatch Models" has the general meaning set forth in Recital B, with Product and technical specifications set forth in Schedule A for the ActiPatch Models comprising the initial Covered Products.

"Additional Products" has the meaning set forth in Section 2.2.

"Affiliate" means, with respect to any Person, any other Person that directly or indirectly controls, is controlled by, or is under common control with the Person in question.

**“Agreement”** means this Distribution Agreement, as amended from time to time.

**“Applicable Law”** means, with respect to a Party, any legislation, regulation, rule or procedure passed, adopted, implemented or amended by any federal, state, local or foreign governmental or legislative body, or any notice of a decision, finding or action by any federal, state, local or foreign governmental agency, court or other administrative body, in each case to the extent it has become effective, binding on the Party, its assets or operations or applicable to the subject matter or its performance of this Agreement, from and after the date compliance therewith is mandated by the terms thereof.

**“Appointment”** has the meaning set forth in Section 2.1.

**“Company”** means BioElectronics Corporation, a Maryland Corporation, and its successors and permitted assigns.

**“Company Support Services”** has the meaning set forth in Section 6.

**“Veterinary Market”** means (a) licensed health care providers practicing medicine or otherwise providing healthcare services who sell or provide related products to patients of their practices, (b) hospitals, clinics and other facilities that provide health care under the direction of licensed health care providers and that sell or provide related products to their patients or clients. It further means retail sales of the veterinary product line in all global territories except those excluded in Schedule C.

**“Covered Product Improvements”** means any enhancements, refinements or other improvements to the Covered Products developed by the Company during the Term.

**“Covered Products”** means ActiPatch Therapy products described in Schedule A, (b) any Additional Products included in the Appointment pursuant to Section 2.2 and (c) any Covered Product Improvements.

**“Distribution Year”** means (a) the twelve-month period commencing on the Effective Date, and (b) each successive twelve-month period during the Term.

**“Distributor”** means Mary K. Whelan, eMarkets Group LLC, and its successors and permitted assigns.

**“Effective Date”** means the date of this Agreement first set forth above.

**“FDA”** means the United States Food and Drug Administration.

**“Field Of Use”** means the use of the Product or New Product (as defined in Section 2.2) related to veterinary medicine or procedures. Any sales to (a) veterinarian practicing, who sell or provide related products to patients of their medical practices, (b) hospitals, clinics, and other facilities that perform procedures under the direction of veterinarian that see or provide related products to their patients and clients and (c) retail outlets that provide products for pets, horses and other domestic animals, shall be considered to be within the Field of Use.

**“Indemnified Party”** and **“Indemnifying Party”** have the respective meanings set forth in Section 9.1.

"Information" has the meaning set forth in Section 8.1.

"Initial Purchase Commitment" has the meaning set forth in Section 4.1.

"Know How" means any and all processes, techniques, methods, compositions, formulae, technical data and other information, whether or not a trade secret.

"Outside Territory" means any jurisdiction outside the Territory or Field of Use where the Covered Products may be sold in accordance with Applicable Law.

"Party" means the Company, the Distributor or their respective successors or permitted assigns.

"Person" means an individual, any form of business enterprise, including a corporation, Limited Liability Company, partnership or limited partnership, and any other juridical entity or its representative, including a trust, trustee, estate, custodian, administrator, personal representative, nominee or any other entity acting on its own behalf or in a representative capacity.

"Products" means pulsed electromagnetic devices for veterinary medicine.

"Proprietary Rights" means all legal, equitable or moral intellectual property rights or proprietary rights or benefits, including copyrights, patents and patent applications, formulae, processes, moral rights, trademarks, trade names, rights of priority, mask and derivative work rights, Know How and trade secret rights.

"Term" has the meaning set forth in Section 10.1.

"Territory" means the states of the United States of America.

"Volume Targets" has the meaning set forth in Section 2.3.

1.2 *Construction.* Unless otherwise expressly provided herein, all references to Recitals, Sections or Schedules refer to recitals, sections or schedules to this Agreement. The Schedules are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Capitalized terms used in the Schedules and not otherwise defined shall have the respective meanings ascribed to them in this Agreement.

## 2. *Appointment of the Distributor*

2.1 *Sales of Covered Products to the Veterinary Market.* Subject to the terms and conditions set forth in this Agreement, the Company hereby appoints the Distributor to act as its distributor of the Covered Products to the Veterinary Market in the Territory during the Term (the "Appointment").

2.2 *Additional Covered Products.* If the Company develops additional Products (other than its ActiPatch Models) for sale to the Licensed Health Care Providers Market ("Additional Products") at any time during the Term, it will give timely written notice to the Distributor in each instance, describing the Additional Product in reasonable detail, including its regulatory status, and specifying the projected launch date and the offered terms to the Distributor hereunder. The Distributor may add the Additional Product to the Appointment as a Covered

Product for purchase from the Company on the offered terms and subject to the conditions set forth in this Agreement and Schedule A shall be deemed to be amended accordingly for all purposes of this Agreement.

2.3 *Initial Exclusivity Conditions.* The distributor shall be required to purchase from the Company as its initial purchase not less than 1,500 (one thousand five hundred units). The exclusivity of the Appointment for the Provider Market in the Territory is (a) conferred for the first Distribution Year in reliance on the Distributor's 1<sup>st</sup> Distribution Year Commitment, and (b) conditioned for each successive Distribution Year on the Distributor's fulfillment of the volume benchmarks set forth below (each, a "Volume Target") for its purchase of Covered Products from the Company on the terms set forth in Section 4 during the immediately preceding Distribution Year.

**Appointment Exclusivity Volume Targets**

10,000	units in the 1 <sup>st</sup> Distribution Year
25,000	units in the 2 <sup>nd</sup> Distribution Year
50,000	units in the 3 <sup>rd</sup> Distribution Year
75,000	units in the 4 <sup>th</sup> Distribution Year

2.4 *Remedies for Failure to Meet Exclusivity Conditions.* If the Distributor fails to fulfill the Exclusivity Condition for any Distribution Year and the failure is not caused by the Company's inability to deliver Covered Products in accordance with Section 4, the Company may elect, in its sole discretion, to either implement non-exclusive distribution arrangements with third parties for sales of the Covered Products to the Provider Market in the Territory or terminate this Agreement pursuant to Section 10.3.

2.5 *Other Markets.* The Distributor acknowledges that the Company may sell any of its Products, directly or through third parties, under the ActiPatch or RecoveryRx Brand Features or otherwise, outside the Licensed Health Care Providers Market in the Territory and to all markets in the Outside Territory, at any price and Product configuration, as it elects in its sole discretion.

**3. Promotion of Covered Products**

3.1 *Promotion of Covered Products.* Throughout the Term, the Distributor will use commercially reasonable efforts and commit adequate capital and human resources to promote, advertise, and market the Covered Products in the Veterinary Market.

3.2 *Promotional Materials.* As promptly as practicable after the Effective Date, the Distributor will produce marketing and promotional materials featuring the Covered Products in form and substance reasonably acceptable to the Company. Throughout the Term, the Company will provide the Distributor with a current version of its brochures for Covered Products and any advertising and other promotional materials the Company may in its sole discretion develop for Covered Products. No medical claims for a Covered Product or its underlying technology included in the marketing and promotional materials developed or used by the Distributor shall be inconsistent with those included in the Company's brochures or other promotional materials for that Covered Product.

#### 4. Purchase of Covered Products

4.1 *Orders.* The Distributor will submit its orders for Covered Products in writing to the Company, whether by U.S. mail, facsimile, electronic communications or as otherwise mutually agreed. Only orders accepted and confirmed in writing by the Company will be deemed valid and binding on the Parties.

4.2 *Payment.* The Distributor will pay the Company for each unit of the Covered Products ordered hereunder at its "Unit Price to Distributor" listed in Schedule A. Orders accepted and confirmed in writing by the Company shall be due and payable by Distributor on net 30-day terms, FOB factory. Any overdue payments hereunder shall bear interest from the due date at 1.5% per month.

4.3 *Delivery.* The Company will use commercially reasonable efforts to ensure timely bulk shipments of Covered Products in accordance with the delivery terms of orders for Covered Products accepted and confirmed in writing by the Company hereunder.

4.4 *Lot Tracking System.* Each shipment of Covered Products delivered to the Distributor will be labeled to reflect its lot number assigned by the Company in accordance with its lot tracking system. The Distributor will coordinate the labeled lot numbers with the serial number tracking protocols it maintains for Covered Products in accordance with Section 5.2.

4.5 *Non-Competition.* The Distributor shall not, directly or indirectly through any vehicle or means, promote or sell any products or lines of products during the Term that are similar to the Covered Products in form or operation or that otherwise compete with the Covered Products.

#### 5. Processing of Covered Products

5.1 *Processing of ActiPatch Units.* The Company will fill orders for ActiPatch Models hereunder by bulk shipping to the Distributor separately packaged units with the specifications for the particular ActiPatch Model set forth in Schedule A. The packaging and labeling of all ActiPatch Models shipped hereunder will include the ActiPatch Brand Features and all other labeling content or notices required for compliance with Applicable Law.

5.2 *Product Tracking.* Covered Products shipped to customers by or for the account of the Distributor hereunder shall include serial numbers based on, the Distributor's tracking protocols.

5.3 *Recordkeeping.* The Distributor will maintain, throughout the Term and for not less than six years thereafter, complete and accurate books of account and records (including documents supporting entries in the books of account) of all transactions relating to its sales of Covered Products. In the event the Company notifies the Distributor of a recall of any Covered Products, the Distributor will make those records available to the Company and otherwise cooperate with and assist the Company in effecting the recall at the Company's expense.

5.4 *ActiPatch Brand Features and Proprietary Rights.* The Distributor will not at any time or in any manner (a) use the ActiPatch Brand Features in any advertising, labeling, packaging or printed matter of any kind without the Company's prior written consent, (b) take any other action adversely affecting the Company's Proprietary Rights in the Products, the ActiPatch Brand Features or any registration thereof or which, directly or indirectly, reduces the

value of the ActiPatch Brand Features or detracts from the Company's reputation, (c) take any action in connection with the promotion and distribution of Covered Products otherwise than in compliance with Applicable Law or (d) register or apply to register any ActiPatch Brand Features or any trademark or logo similar thereto anywhere in the world. If the Distributor learns of any infringement or replication of the ActiPatch Brand Features, it will promptly notify the Company thereof and cooperate with the Company in all respects to remedy the infringement.

**6. Company Support Services.** Subject to reasonable notice and scheduling considerations, the Company will perform the support obligations specified in this Section 6 ("Company Support Services"), at no additional cost to the Distributor, throughout the Term.

**6.1 Training.** The Company will use reasonable commercial efforts to make its marketing and technical personnel available at mutually acceptable times and locations to provide training and product education for the Covered Products to members of the Distributor's marketing and sales staff on all aspects of the use and operation of the Covered Products.

**6.2 Customer Support.** The Distributor shall have primary responsibility for managing the satisfactory resolution of customer support issues for Covered Products. Upon reasonable prior notice, the Company will make its technical personnel available, through telephonic conferencing facilities, to assist the Distributor in resolving support issues for Covered Products raised by its customers.

**6.3 Covered Product Improvements** If the Company develops Covered Product Improvements, they will be integrated into the Covered Products shipped to the Distributor hereunder, commencing upon their initial availability.

## **7. Representations and Warranties**

**7.1 Representations and Warranties of the Company.** The Company represents and warrants to the Distributor that (a) this Agreement has been duly authorized by all requisite corporate action on its behalf and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, (b) its execution and performance of this Agreement will not violate any Applicable Law or any contract under which it is bound and (c) it owns or has valid licenses to all Proprietary Rights relating to the Covered Products and has the right to grant the distributorship and license rights provided herein without infringing any Proprietary Rights of third parties.

**7.2 Representations and Warranties of the Distributor.** The Distributor represents and warrants to the Company that (a) this Agreement has been duly authorized by all requisite corporate action on its behalf and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, (b) its execution and performance of this Agreement will not violate any Applicable Law or any contract under which it is bound and (c) it has the infrastructure and other resources necessary to perform its obligations hereunder.

## **8. Confidentiality**

**8.1 Confidentiality Undertaking.** Each Party acknowledge that its performance of this Agreement will entail the receipt of confidential information of the other Party, including technical specifications for the Products and information about business methods, prospects, costs, markets, pricing policies, operational methods, concepts, technical processes, applications and other trade secrets, as well as other business affairs and methods not generally available to

the public (collectively, "Information"). Each Party agrees that, subject to the exceptions set forth below, during the term of this Agreement and for five years thereafter, it will (a) keep all Information of the other Party strictly confidential, (b) not disclose any Information of the other Party, without its consent, to any of its employees or agents or any of its Affiliates' employees or agents, other than those who have a need to know and are subject to confidentiality obligations substantially similar to those provided herein, (d) not use any Information of the other Party, except as provided herein, for its own use or benefit or the use or benefit of any Affiliate, (e) take all reasonable steps necessary to prevent any breach of the foregoing obligations by any of its employees or agents or any of its Affiliates' employees or agents who receive or have access to Information of the other Party and (f) not modify, reverse engineer, decompile, create other works from or disassemble any software programs or firmware contained in the Information of the other Party.

8.2 *Exceptions.* For purposes of this Section 8, Information will not include information that (a) is in the public domain at the time of disclosure to a Party, (b) becomes part of the public domain after disclosure to a Party through no fault, act or failure to act, error or breach of this Section 8 by the recipient or (c) is required by order, statute or regulation of any government authority to be disclosed to any court or other body, *provided* that the recipient shall notify the disclosing Party thereof to afford it the opportunity to obtain a protective order or other relief.

8.3 *Remedies for Breach.* Each Party acknowledges that damages at law will be an insufficient remedy in the event that it violates the terms of this Section 8 and that the other Party may apply for and obtain immediate injunctive relief in any court of competent jurisdiction to restrain the breach or threatened breach of its undertakings and covenants contained herein.

## 9. Indemnification

9.1 *For Breach.* Each Party (an "Indemnifying Party") shall indemnify and hold harmless the other Party and its officers, directors, shareholders and employees (collectively, the "Indemnified Party") from and against any and all judgments, penalties, fines and amounts paid in settlement, including any interest assessments or other charges payable in connection therewith, and all reasonable expenses, including attorneys' fees, retainers and disbursements, court costs, experts' fees and travel expenses, incurred by the Indemnified Party in connection with any threatened, pending or completed action, claim, suit, investigation, hearing or other proceeding, whether civil, criminal, administrative, arbitrative or investigative, any appeal therein or any inquiry or investigation that could lead thereto, to which the Indemnified Party is, was or at any time becomes a party, arising from the breach by the Indemnifying Party of its representations and warranties under Section 7 or its obligations under Section 8.

9.2 *For Product Defects.* The Company shall indemnify and hold the Distributor harmless from and against any liabilities, claims, causes of action, suits, damages and expenses (including reasonable attorneys' fees) arising out of alleged inherent defects in any of the Covered Products existing at the time they are sold by the Company to the Distributor.

9.3 *Defense of Claims.* The Indemnifying Party under this Section 9, at its sole cost and expense and with counsel reasonably acceptable to the Indemnified Party, will take reasonable and appropriate action to defend any suit, action, claim or proceeding subject to its indemnification obligation hereunder. An Indemnifying Party will not defend any claim, action, suit or proceeding in any way that would adversely affect or be in derogation of any rights of the Indemnified Party, including its Proprietary Rights.

9.4 *Assumption of Defense.* In the event that an Indemnified Party reasonably determines that the Indemnifying Party has not taken appropriate steps to defend its interests in any suit, action, claim or proceeding giving rise to its indemnification rights under this Section 9, the Indemnified Party shall have the right, at the sole cost and expense of the Indemnifying Party, to assume the defense thereof with counsel of its own choosing, *provided* that the Indemnifying Party shall not be responsible under any circumstances for the costs of one counsel for all Indemnified Parties.

9.5 *Settlement of Claims.* No settlement or discharge of any action, suit, claim or proceeding shall be made by an Indemnifying Party without the prior written consent of the Indemnified Party, which consent shall not be unreasonably withheld or delayed if the settlement or discharge includes a general release by all adverse parties in favor of the Indemnified Party.

## 10. Terms and Termination

10.1 *Term.* The Term shall commence on the Effective Date and continue until the end of the third Distribution Year, subject to earlier termination pursuant to Section 10.2.

10.2 *Termination for Breach.* Either Party may terminate this Agreement upon notice that the other Party has committed a material breach of one or more of its material obligations hereunder and has failed to cure the breach within 30 days of written notice by the non-breaching Party, specifying the nature of the breach in reasonable detail.

10.3 *Termination for Failure to Meet Exclusivity Condition.* The Company may terminate this Agreement pursuant to Section 2.4 within ninety (90) days after the end of any Distribution Year upon notice that the Distributor has failed to satisfy its Exclusivity Condition for that Distribution Year.

10.4 *Effect of Termination.* The obligations of the Parties under Sections 4, 5, 8, and 9 shall survive the expiration or termination of this Agreement.

11. *Limitation of Liability.* Any liability arising under this Agreement, under any cause of action or theory of liability, shall be limited to direct, objectively measurable damages, which shall not exceed, under Section 9 or otherwise, for any single matter, claim or proceeding, the greater of \$100,000 or the aggregate amount of payments made by the Distributor hereunder during the twelve months preceding the commencement of the matter, claim or proceeding. No Party shall have any liability to any other Party or any third party for any indirect, special, consequential or speculative damages, including lost profits, lost data, loss of opportunity, loss of use or costs of procuring substitute goods or services, business interruptions and loss of profits, irrespective of any advance notice of the possibility thereof. These limitations shall apply notwithstanding the failure of the essential purpose of any limited remedy.

12. *Publicity.* Except as provided herein, neither Party will use the name of the other Party in any press release or other public announcement about the subject matter of this Agreement without the other Party's consent, which shall not be unreasonably withheld or delayed.

13. *Independent Contractors; Expenses.* Each Party will act as an independent contractor hereunder, with sole responsibility for its own operations, personnel and operating expenses, and nothing contained in this Agreement will be construed to create a partnership or

joint venture between the Parties. Except as otherwise provided herein, each Party shall bear its own expenses incurred in its performance of this Agreement.

14. *Assignability.* This Agreement and a Party's rights and obligations hereunder may not be assigned or transferred for any reason without the written consent of the other Party, which shall not be unreasonably withheld or delayed if the proposed assignee provides the other Party with (a) representations and warranties to the effect set forth in Section 7.1, if the Company is the proposed assignor, or in Section 7.2, if the Distributor is the proposed assignor, and (b) an assumption of the proposed assignor's obligations under this Agreement, in form and substance reasonably satisfactory to the other Party.

15. *Waiver of Provisions.* The waiver of compliance at any time with any of the provisions, terms or conditions contained in this Agreement shall not be considered a waiver of the provision, term or condition itself or of any of the other provisions, terms or conditions hereof. Any waiver hereunder must be expressed and in writing by the Party agreeing to waive any right hereunder.

16. *Captions.* The headings and captions in this Agreement and the Schedules are for convenience and identification only and are in no way intended to define, limit or expand the scope and intent of this Agreement or any provision hereof.

17. *Integration.* This Agreement, including the Schedules, contains the entire agreement of the Parties with respect to the subject matter hereof.

18. *Amendment.* This Agreement may not be amended or modified except by a written instrument signed by both Parties.

19. *Governing Law.* This Agreement and the rights and obligations of the Parties shall be governed by and construed in accordance with the laws of the State of Maryland, excluding any conflict of laws rules of that State or other principle that might refer the governance or construction of this Agreement to the laws of another jurisdiction.

20. *Binding Effect.* The terms, conditions and provisions of this Agreement and all obligations of the Parties shall inure to the benefit of, and be binding upon, the Parties and their respective successors and permitted assigns.

21. *Severability.* The invalidity or unenforceability of any provision of this Agreement shall not affect any other provision hereof, and the remainder of this Agreement shall be construed as if the invalid or unenforceable provision were omitted.

22. *Notices.* Except as otherwise provided in Section 4.1, all demands, notices, and communications provided for in this Agreement shall be in writing and shall be either personally delivered, mailed by registered or certified mail (return receipt requested) or sent by reputable overnight courier service (delivery charges prepaid) to the applicable address specified below, or at any new address that the recipient Party has specified by prior written notice to the sending Party. Any notice complying with these requirements shall be deemed to have been given when delivered personally, on the third business day after deposit postage pre-paid in the U.S. mail or on the business day after deposit with a reputable overnight courier, as the case may be.

*If to the Distributor:*  
Mary K. Whelan

eMarkets Group, LLC  
19 Hamilton Drive, East  
North Caldwell, NJ 07006

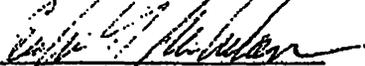
*If to the Company:*

BioElectronics Corporation  
4539 Metropolitan Court  
Frederick, MD 21704  
Attention: Andrew J. Whelan, President & CEO

**23. Counterparts.** This Agreement may be executed in any number of separate counterparts that together will constitute but one and the same Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date and year first above written.

**BIOELECTRONICS CORPORATION**

By:   
Andrew J. Whelan, President

By:   
Mary K. Whelan  
President and Managing Director  
eMarkets, I.I.C.

**Schedule A**

**COVERED PRODUCTS**

*Covered Product Specifications and Unit Prices*

Item Number	Description	Distributor Cost
205	Small Cresccnt	\$ 10.50
212	Large Square	\$ 10.50
239	5cm Loop Device	\$ 10.50
238	8cm Loop Device	\$ 10.50
240	12cm Loop Device	\$ 10.50

**Schedule B**

*Covered Product Technical Specifications*

Power supply.....3 volts DC  
Nominal carrier frequency .....27.1 MHz  
Pulse frequency.....1,000 per second  
Pulse duration..... 100 microseconds  
Peak <sup>(1)</sup> spatial power density ..... 75 microwatts/cm<sup>2</sup>  
Maximum internal voltage.....5 volts

(1) Peak spatial power density is the RF power per unit area, measured during each pulse of the carrier frequency.

**Schedule C**

This agreement shall exclude the following countries in which pre-existing relationships exist:

- Canada
- United Kingdom
- Italy
- Scandanavia
- Korea
- Saudi Arabia

Right to use the veterinary brand, "HealFast Therapy" shall be granted to those distributors for an annual license fee and brand co-marketing agreement.